

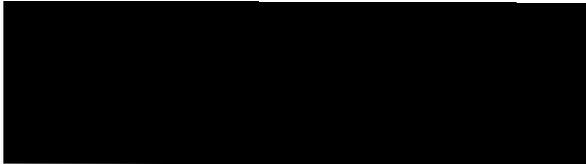
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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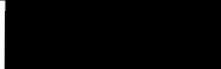


U.S. Citizenship
and Immigration
Services



H3

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

JUL 28 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), in order to return to the United States to join her United States citizen spouse, [REDACTED], and children.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant asserts that the District Director's decision did not adequately consider all of her equitable factors and the extent of extreme hardship her husband would suffer. The applicant states that each and every factor should have been considered individually and cumulatively as the law requires. As corroborating evidence, the applicant furnished letters from her spouse, evidence of her V nonimmigrant status, school records, letters from school counselors, and letters from the St. Maria Goretti Church. The entire record was reviewed and considered in rendering this decision.¹

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

¹ The AAO notes that record contains letters from the applicant's spouse and medical documentation that is written in Spanish without accompanying English translations. Because the applicant failed to submit a certified translation of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in November 2000. On July 23, 2004, the applicant changed status to V nonimmigrant, valid until July 22, 2006. The applicant voluntarily departed to Mexico on July 22, 2005 to attend her appointment for a visa interview at the U.S. consulate in Ciudad Juarez. The regulation at 8 C.F.R. § 214.15(i)(3)(ii) provides that a V nonimmigrant alien is subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act when applying for an immigrant visa. Consequently, the applicant's departure from the United States rendered her inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the

applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [REDACTED], a U.S. lawful permanent resident, on March 1, 1988. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have three children, [REDACTED], 20 years old, [REDACTED], 17 years old, and [REDACTED], 12 years old. Hardship to the applicant's children will be considered insofar as it results in hardship to the applicant's spouse.

The applicant's spouse asserts in his letter filed on appeal that he is suffering financial hardship as a result of his wife's inadmissibility. He states that without his wife's income he has gone into debt, is having problems paying bills, and is at risk of losing his home. He states that he also has to support his children and wife in Mexico. He notes that his children are missing school and are not eating well because of a lack of funds. He states that he worries that the economy is poor and his wife will not have a place to live and work. He concludes that if the waiver is not granted it would condemn him to poverty.

The AAO will consider financial hardship as one factor in establishing extreme hardship. However, in the present case, sufficient documentation has not been provided to demonstrate the applicant's spouse's financial situation, such as evidence of his annual income and expenses or assets and liabilities. Further, the record does not contain any information related to the applicant's occupation and earnings when she resided in the United States. The applicant stated on her immigrant visa application (Form DS-230 Part I) that she is a housewife and has never been employed during the last 10 years. Finally, the record does not provide any information on where the applicant and her children are residing in Mexico. Nor does it indicate whether the applicant is currently employed or seeking employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

The applicant's spouse asserts in his appeal letter that his children have been emotionally traumatized because they have lost their friends, toys, sports, home, school and father. He notes that his children are in Mexico because they are following to join the applicant. The record contains a statement the applicant's spouse initially filed with the waiver application. In this statement, the applicant's spouse asserts that his children will miss school because it will be hard to enroll them in school in Mexico and education is different in Mexico. As corroborating evidence the applicant furnished her son's transcript and attendance record, and letters from school counselors attesting to her children's school attendance.

The AAO notes that the aforementioned statements address the hardship that the applicant's children are suffering as a result of the applicant's inadmissibility. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent

resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible.

Although AAO will consider hardship to the applicant's children insofar as it results in hardship to the applicant's spouse, in the present case, the hardship is not demonstrated by the record. The record fails to convey when the applicant's children first arrived in the United States from Mexico. It should be noted that if the applicant's two older children first entered the United States with their mother in November 2000, they would have already spent several of their formative years in Mexico and attended several years of school in Mexico. Further, the record fails to demonstrate the reason the applicant's children would be unable to complete their education in Mexico. Finally, the record does not indicate whether the applicant's children have any cultural, linguistic or social hurdles to overcome in Mexico. While the AAO recognizes that the refusal of the applicant's admission to the United States may result in the loss of academic aspirations for her children, this factor does not rise to the level of extreme hardship.

The applicant's spouse further asserts in his appeal letter that the separation from the applicant has caused him emotional hardship. He states that he is living alone and does not have his children with him because they are following to join the applicant. He states that he has suffered because of the separation from his wife and children. He notes that the cumulative effect of family suffering should be considered. He states that he is suffering psychological harm from worrying about his spouse. He states that he worries about his wife being alone and raising children alone. He concludes that if the waiver is not granted it would condemn him a life of no hope as a separated family.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Furthermore, the applicant's spouse has not discussed whether he would suffer extreme hardship if he accompanied the applicant to Mexico. The AAO notes that extreme hardship to a qualifying relative

must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent's wife spoke Spanish and the majority of her family was originally from the respondent's country of citizenship, Mexico. The BIA stated that based on these factors the respondent's wife "should have less difficulty adjusting to live in a foreign country." The record in the present case reflects that the applicant's spouse, a citizen of Mexico, became a U.S. lawful permanent resident on December 1, 1990. He married the applicant in Mexico on March 2, 1988, 12 years prior to her entry into the United States. During this time period, they had three children born in Mexico, indicating the applicant has likely traveled to Mexico on several occasions. Thus, the applicant should have minimal difficulty in adjusting to culture and residence in Mexico.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Accordingly, the letters from [REDACTED] of the St. Maria Goretti Parish, which address the applicant's good character, will not be discussed in these proceedings.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.