



U.S. Citizenship
and Immigration
Services

tlg

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2005 518 287)

Date: JUL 29 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated October 30, 2006.

The record contains, *inter alia*: letters from the applicant's wife, [REDACTED] several letters of support; copies of [REDACTED] bills; a copy of [REDACTED] pay stub; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(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 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 Attorney General [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 this case, the record indicates, and the applicant admits, that he entered the United States in 1998 without inspection and remained until February 2006. The applicant accrued unlawful presence for eight years. He now seeks admission within ten years of his 2006 departure. Accordingly, he is inadmissible to the United States 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. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In this case, [REDACTED] states that she has suffered extreme hardship since her husband's departure from the United States. She claims she makes \$8.75 per hour, or \$590 every two weeks, which is not enough to pay the mortgage and her bills. [REDACTED] states she is "almost losing [her] house and [her] car." She states she is very desperate and does not want to go on welfare or into bankruptcy. Ms. [REDACTED] states she has been working nights and overtime in order to meet her financial obligations. In addition, she states she has depression and cannot stop crying. [REDACTED] explains that her brother died suddenly a few years ago, and that a few weeks after that, her father and her nephew also died. Furthermore, [REDACTED] states she does not have family close by or anyone who can help her. *Letters from* [REDACTED] dated November 2, 2006, October 6, 2006, and February 8, 2006.

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the couple's circumstances. The AAO finds that [REDACTED] has suffered extreme financial hardship since her husband departed the country. The record indicates she earns \$591 every two weeks and that her monthly expenses far exceed her income. Specifically, [REDACTED] monthly mortgage is \$1,031, her gas bill is \$145, her phone bill is \$49, her water bill is \$45, and her

electric bill is \$15. The record also includes a copy of two auto repair bills totaling over \$400 and a car insurance bill for \$220. Letters of support in the record state that neighbors have “offer[ed] her a warm meal when she is hungry,” and that she “works more than she can” in order to pay her bills. *Letter from* [REDACTED] dated November 9, 2006; *see also Letter from* [REDACTED] dated November 28, 2006 (letter from the pastor of the couple’s church stating [REDACTED] is unable to pay her bills and has entered into a deep depression); *Letter from* [REDACTED] dated November 28, 2006 (stating [REDACTED] is not making enough money to buy her food or pay the bills despite working a lot of overtime); *Letter from* [REDACTED] dated November 11, 2006 (stating that [REDACTED] is working more than 12 hours a day which is “killing her slo[w]ly”).

Nonetheless, [REDACTED] does not discuss the possibility of moving back to Mexico, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. She does not claim that she has any physical or mental health issues that would make her transition to living in Mexico again any more difficult than would normally be expected. She does not contend she no longer has family in Mexico or that she could not find employment in Mexico. Even assuming her standard of living may decline and she may experience some economic hardship by moving back to Mexico, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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.