



U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY, MEXICO
(CDJ 2003 612 220) (CIUDAD JUAREZ)

Date: JUN 11 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, 8 U.S.C. section 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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, 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 is a native and citizen of Mexico. He 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 one year or more and is seeking admission within ten years of his last departure from the United States. He is married to a U.S. citizen and has two U.S. citizen children. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on April 10, 2006.

On appeal, counsel contends that the applicant has met the extreme hardship standard required for a waiver.

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 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.

The record indicates that the applicant entered the United States in 1997 without inspection, and resided in the United States until June 2005, when he voluntarily departed to Mexico and triggered the unlawful presence provisions of the Act. Therefore, the applicant was unlawfully present in the United States for more than one year and is now seeking admission within ten years of his last

departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 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 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 U.S. 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the counsel's brief; three statements from the applicant's spouse, with two dated June 22, 2005 and June 6, 2006, and a third undated; a pawnshop receipt; an affidavit sworn by [REDACTED] and [REDACTED] regarding their loan to the applicant's spouse; a telephone bill, rental agreement and birth certificates.

The record also includes copies of birth certificates for the applicant's children, pay stubs for the applicant's spouse, and a medical records.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the applicant's spouse is extremely depressed and anxious over the exclusion of the applicant, that the applicant's spouse has had to send her children back to Mexico to reside with the applicant, and that she is suffering financially. The applicant's spouse also asserts that she is suffering as a result of her separation from the applicant and her children, and that she believes she is on the verge of a nervous breakdown. The applicant's spouse also states that she is heavily in debt and that she does not earn enough to support herself, meet her family's needs and pay her loans.

The AAO notes the statements made by the applicant's spouse regarding her emotional suffering but finds the record to contain no documentary evidence, e.g. an evaluation of her emotional/mental state by a mental health practitioner, in support of her assertions. While the AAO acknowledges that the applicant's spouse states that she is unable to afford mental health counseling, her statements of emotional hardship, without medical documentation, are insufficient to establish that such hardship exceeds that normally experienced by spouses as a result of removal. 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)).

The applicant's spouse has asserted that her husband has been unable to find a job in Mexico, that she has had to sell their two cars and now walks to work, and owes several people money for supporting her during the applicant's absence and her father-in-law has moved in with her to help pay the rent. The record includes an affidavit from [REDACTED] and [REDACTED] detailing a loan to the applicant's spouse for legal expenses in connection with the applicant's case. The record also contains a receipt for items pawned, a copy of a telephone bill for \$94 and a pay stub for the applicant's spouse indicating she earned \$360 for a two-week period in May. While the record does include some evidence of the applicant's spouse's financial situation, it is not sufficient to make an accurate determination of the hardship she is enduring, e.g. the record does not document the extent to which her father-in-law is providing for the rent of their apartment, or that she has sold her cars as asserted. Moreover, the record contains no documentary evidence, e.g., country conditions reports on the Mexican economy, which establishes that the applicant is unable to obtain employment in Mexico and assist the applicant financially from outside the United States. Therefore, the claims by counsel and the applicant's spouse are not sufficiently documented for the AAO to reach a determination that she will suffer an extreme hardship if the applicant is excluded and she remains in the United States.

Extreme hardship to a qualifying relative must also be established if the applicant's spouse relocates with the applicant. The applicant's spouse states that Mexico is a country with few employment opportunities, that the employment available would not pay more than \$12 a day and that it would be extremely difficult to support a family on \$240 a month. She further states that, if she were to join the applicant in Mexico, she would have to live in a house with no running water, no heating or air conditioning and would not even have a solid roof over her head. While the AAO acknowledges the concerns expressed by the applicant's spouse, it again notes that the record contains no country

conditions reports or other documentation on the Mexican economy that demonstrate that the applicant and his spouse would be unable to obtain employment in Mexico and adequately support and house their family.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's wife will suffer hardship as a result of the applicant's inadmissibility. However, the record does not distinguish her hardship from that experienced by others as a result of removal and, therefore, does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 rests 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.