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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



U.S. Citizenship
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FILE: [REDACTED]
(CDJ 2004 708 101 relates)

Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUN 25 2009

IN RE: Applicant: [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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in 1994. He did not depart the United States until June 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in June 2005. He was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child, born in 2002, and his lawful permanent resident parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 26, 2006.

In support of the appeal, the applicant's representative submits an addendum to the Form I-290B, Notice of Appeal (Form I-290B) and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

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

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is requesting a waiver of inadmissibility.

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...

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The record contains references to the hardship that the applicant's U.S. citizen child would suffer if the applicant's waiver of inadmissibility is not granted. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse and lawful permanent resident parents are the only qualifying relatives, and hardship to the applicant and/or his child cannot be considered, except as it may affect the applicant's spouse.

To begin, the applicant's U.S. citizen spouse contends that she will suffer emotional hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to the close relationship she has with her husband and due to the emotional hardship her child is experiencing based on her father's long-term physical absence. The applicant's spouse also notes and documents that her daughter has been sick many times since the applicant departed the United States and has been diagnosed with Asthma, a condition that will require nebulizer treatment for the rest of her life. *Letter from* [REDACTED], dated July 26, 2006.

To support the emotional hardship referenced by the applicant's spouse, a psychological evaluation has been provided by [REDACTED]. Dr. [REDACTED] concludes that the applicant's spouse is suffering from anxiety and depression emanating from separation from her husband and the burden of parenting a child with emotional issues. [REDACTED] confirms that the applicant's spouse is currently taking prescription medication for depression. *See Letter from [REDACTED] Ander Behavioral Center*, dated July 29, 2006.

Finally, the applicant's spouse notes that due to her husband's inadmissibility, she has had to postpone her plans to attend college, and she has been forced to ask the government for help, in the form of food stamps and Medicaid. *Supra* at 2. The applicant's spouse and child have also been forced to reside with the applicant's mother. *See Letter from [REDACTED]* dated July 26, 2006.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to a young child with serious medical issues without the complete emotional, physical and financial support of the applicant. Moreover, as the applicant's spouse contends and as country condition reports indicate, it is difficult to obtain gainful employment in Mexico with sufficient income to support a spouse and child in the United States. *See U.S. Department of State Profile-Mexico*, dated May 2009. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to remain abroad while she resides in the United States. The applicant's spouse needs her husband's emotional and financial support on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's U.S. citizen spouse asserts that she is "worried and frightened for our safety in Mexico, because when I go visit my husband [the applicant] he tells me that he has seen a lot of violence. He worries for our safety...." *Supra* at 2. No documentation has been provided that outlines the specific hardships the applicant's spouse would face were she to relocate to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Suffice*, 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 depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. 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, and thus the familial and emotional bonds, exist. 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). The AAO thus concludes that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse will face extreme hardship were the applicant unable to reside in the United States, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant’s U.S. citizen spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.²

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. 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. The waiver application is denied.

² As noted above, the applicant’s lawful permanent resident parents are qualifying relatives for purposes of a section 212(a)(9)(B)(v) waiver. However, the only documentation submitted with respect to the applicant’s parents is a letter from the applicant’s mother, referencing the hardships her daughter-in-law and granddaughter are facing; no references are made to the hardships the applicant’s parents would experience were the applicant’s waiver request denied. As such, the AAO is unable to consider hardship to the applicant’s lawful permanent resident parents in relation to the instant appeal.