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



**U.S. Citizenship  
and Immigration  
Services**

H3

FILE:

[REDACTED]  
(CDJ 2004 733 495)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

**MAR 17 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. section 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 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 one year or more and seeking admission within ten years of his last departure from the United States. He is married to a naturalized U.S. citizen. 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 September 14, 2006.

On appeal, the applicant contends that he has met the extreme hardship standard required for a waiver. He submits evidence to establish that his wife is suffering from depression and will suffer economically if he is not allowed to return to the United States.

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 August 1996 without inspection, and resided in the United States until October 2005, when he voluntarily departed to Mexico. Therefore, the applicant was unlawfully present in the United States for over a year, from April 1, 1997, the effective date of the unlawful presence provision of the Act until October 2005, 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 relevant 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 of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence:

- Statements from the applicant's wife, dated November 11, 2005, and November 27, 2006, asserting that she is depressed and has to work two jobs in the absence of her husband. She also states that the applicant's failure to obtain a waiver has caused significant emotional, financial, psychological and family hardships, and that she needs the applicant to relieve her job stress, to provide family income and to help raise their daughter.

- Statement from [REDACTED] a friend of the applicant's wife, noting the applicant assumed the role of head of household when his wife's father died, becoming the main source of income. She also states that the applicant's wife does not want to live in Mexico because her daughter would not receive adequate healthcare or a good education.  
Statement from [REDACTED] mother of the applicant's wife, asserting that her daughter is suffering in the applicant's absence, and that the applicant provided support for the household when her husband died. She further states that her daughter's health has always been fragile and that living in Mexico would cause her to have medical problems.  
Statements from [REDACTED] and [REDACTED], work associates of the applicant's wife. [REDACTED] reports that the applicant's wife is under strain from having to work two jobs. [REDACTED] notes that the applicant's wife was so distressed over the applicant's exclusion that she could not contrate or "even find the time to work," and that having to care for her daughter means that she cannot "work outside the home for more than a few hours a day."
- Joint statement from [REDACTED] and [REDACTED] asserting that the applicant is in a "dangerous" state of depression, that the three families in the applicant's wife's household are living below the poverty level, and that the applicant's daughter has an eating disorder and needs the applicant's financial help to obtain health insurance.
- Statement from [REDACTED] the applicant's brother-in-law, asserting that his sister is not sleeping or eating, and has lost a significant amount of weight.  
Statement from [REDACTED] asserting that the applicant's wife is struggling emotionally and economically.  
Medical document signed by [REDACTED], indicating that the applicant's wife is not sleeping or eating well, is working two jobs as a single parent, has constant headaches and misses the applicant.

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

If the applicant's wife relocates to Mexico, the applicant must prove that she would suffer extreme hardship. The AAO acknowledges the statement from the applicant's wife's friend, [REDACTED] who notes that the applicant's daughter would not receive adequate healthcare or a good education if she and her mother were to move to Mexico. It further acknowledges the concerns expressed by the applicant's wife's mother who believes that living in Mexico would result in medical problems for her daughter. The record, however, does not offer documentary evidence in support of either claim, e.g., published country conditions reports on healthcare and education in Mexico, or medical documentation regarding the state of the applicant's wife's health. 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)). Moreover, as previously indicated, the applicant's daughter is not a qualifying relative for the purposes of this proceeding and the record fails to document how the applicant's wife would be affected if adequate healthcare or educational opportunities were not available to her daughter in Mexico. Accordingly, the AAO does not find the record to support a finding that the applicant's wife would experience extreme hardship if she joined the applicant in Mexico.

In support of the applicant's claim that his wife would suffer extreme hardship if she remains in the United States without him, the AAO has considered the statements made by the applicant's wife, her family and friends, as well as the medical document signed by [REDACTED]. In her statements, the applicant's wife reports that she is depressed, is working two jobs and that the applicant's inadmissibility has resulted in significant emotional, financial, psychological and family hardship. The statements from the applicant's mother, brother and friends report that the applicant's wife is suffering emotionally in the applicant's absence and, further, that she is not eating or sleeping well. Dr. [REDACTED] report also indicates that the applicant's spouse is missing the applicant, is not sleeping or eating well, is extremely thin with no appetite, has some depression, is working two jobs, is trying to take care of her daughter and has constant headaches.

While the AAO acknowledges these claims, it does not find the record to contain sufficient documentary evidence to establish that the applicant's wife will suffer extreme hardship if the applicant's waiver application is denied. The applicant's wife indicates that she is working two jobs and is experiencing financial hardship in the applicant's absence and two friends, in a joint statement, assert that her household is living below the poverty line. The record, however, provides no documentation of the applicant's wife's employment or the fact or extent of the financial hardship claimed. *Matter of Soffici, supra*. While statements from the applicant's family and friends report that the applicant's wife is suffering emotionally and is not eating or sleeping, the record contains no formal evaluation of her mental/emotional health. The AAO acknowledges [REDACTED]'s medical statement, indicating that the applicant's wife is experiencing some depression and is not eating or sleeping well and needs her husband. However, [REDACTED]'s handwritten observations of the applicant's wife are insufficient proof that she will experience extreme emotional or physical hardship as a result of her separation from the applicant. Dr. [REDACTED] provides no medical diagnosis of or prognosis for the applicant's wife. Moreover, the record does not establish [REDACTED] authority to reach a clinical diagnosis in the case of the applicant's wife's mental health.

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 will face extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's wife will suffer hardships as a result of the applicant's inadmissibility. However, the record does not distinguish these hardships from those that normally result from the inadmissibility of a spouse. Accordingly, they do 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 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.