

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



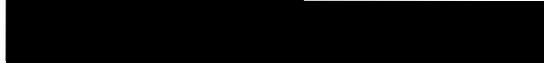
U.S. Citizenship
and Immigration
Services



H3

FILE: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date **MAY 22 2009**
CDJ 2004 740 569

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

The record reflects that the applicant is a 32-year-old 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 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. The applicant is married to a United States citizen, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated June 26, 2006. On appeal, the applicant's spouse, [REDACTED] contends that the separation from his wife imposes extreme hardship on him. See *Form I-290B Notice of Appeal*, received July 24, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on January 4, 2003, in Mexico; a copy of the applicant's spouse's Certificate of Naturalization, dated April 16, 2004; and a letter from the applicant's spouse discussing some of the hardships imposed on him as a result of family separation. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides:

(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 [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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being admitted in or around February, 2003. *See Form I-601, Application for Waiver of Ground of Excludability*, received Nov. 10, 2005; *Decision of the District Director, supra*. The applicant's spouse filed Form I-130, Petition for Alien Relative, on February 13, 2004, and USCIS approved the petition on July 29, 2004. *See Form I-130, Petition for Alien Relative*, filed Feb. 13, 2004. The applicant departed the United States in November, 2005. *See Form I-601, supra; Decision of the District Director, supra*. The applicant's unlawful presence for one year or more and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant himself, or to his children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is 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 non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 37-year-old native of Mexico and citizen of the United States. See *Form I-130, supra; Certificate of Naturalization, supra*. The applicant and her husband have been married for six years. See *Marriage Certificate*. The applicant’s spouse states that he and his wife were in a relationship for over five years before they were married. See *Form I-290B Notice of Appeal, supra*. At the time the applicant’s spouse filed the Notice of Appeal, the applicant was pregnant. See *id*. The applicant’s spouse asserts that he is suffering emotional hardship as a result of the separation from his wife. See *id*.

In support of the emotional hardship claim, the applicant’s spouse describes the emotional pain of separation from his wife. See *Letter of [REDACTED]*, dated Nov. 19, 2005. The applicant’s spouse states that he loves his wife, he does not want to be separated from her for a long period of time, and that his “marriage could be at risk of a breakdown.” *Id*. The applicant’s spouse reports that “as husband and wife,” they “need to be together” to have children, to work and to have a normal married life. *Id*. The applicant’s spouse and his wife already bought their home, and “without her, [he is] not able to keep it up.” *Id*. Further, the applicant’s spouse states that he does not “want to be away from the family when they need [him] the most.” *Form I-290B Notice of Appeal, supra*.

The applicant’s spouse has provided some evidence regarding the psychological hardships imposed upon him as a result of the separation from his wife. See *Letter of [REDACTED]*, *supra; Form I-290B Notice of Appeal, supra*. However, the record does not contain sufficient documentary evidence to support the claim of extreme emotional hardship. For instance, the record does not reflect an ongoing relationship between a mental health professional and the applicant’s spouse, or any history of treatment for anxiety or any other medical or psychological conditions. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in

these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998). Accordingly, the evidence in the current record does not appear to establish that the emotional difficulties encountered by the applicant's spouse are beyond those ordinarily associated with deportation or separation. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.*

Additionally, there is no evidence in the current record to show that the applicant's spouse would suffer significant economic detriment or other concerns based on the denial of the waiver. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). Finally, the applicant's spouse did not provide any evidence regarding the hardships of relocation to Mexico.

Although the applicant's spouse has presented some evidence of harm based on family separation, the record does not contain sufficient evidence to show that any hardships faced by him, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an 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.