



U.S. Citizenship
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FILE: [REDACTED] Office: CIUDAD JUAREZ Date: MAY 22 2009
CDJ 2004 729 596

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. § 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 Officer in Charge, Ciudad Juarez, 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 46-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. It appears that the applicant is married to a lawful permanent resident of the United States, 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 join her husband and daughter in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her lawful permanent resident spouse, and denied the application accordingly. *Decision of the Officer in Charge*, dated June 5, 2006. On appeal, the applicant's U. S. citizen daughter, [REDACTED] contends that the denial of the waiver imposes extreme hardship on the family. *See Form I-290B Notice of Appeal*, dated July 06, 2006.

The record contains, *inter alia*, a letter from the applicant's husband, [REDACTED], discussing the hardships imposed on him as a result of the denial of the applicant's application for a waiver; a Surgery Instruction Form for [REDACTED] a copy of the Permanent Resident Card of [REDACTED] four letters from the applicant's daughter, [REDACTED], discussing the hardships she has encountered based on the separation from her mother, and inquiring about the status this appeal; a letter from [REDACTED] employer, dated July 5, 2006; and a note from the Kearney Clinic, dated July 6th, relating to [REDACTED]. 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 last entered the United States without inspection in or around January, 1991. *See Form I-601, Application for Waiver of Ground of Excludability*, received Feb. 2, 2006; *Decision of the Officer in Charge, supra*. The applicant's daughter filed Form I-130, Petition for Alien Relative, on October 30, 2002, and USCIS approved the petition on July 26, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in or around December, 2005. *See Form I-601, supra; Decision of the Officer in Charge, supra*. The applicant began to accrue unlawful presence on April 1, 1997. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006) (holding that presence in the United States before April 1, 1997, is not considered "unlawful presence" under section 212(a)(9)(B) of the Act).

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 herself, or to her 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-Morales*, 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 has several children, including a 27-year-old U.S. citizen daughter. *See Form I-130, Petition for Alien Relative, supra* (filed by the applicant’s daughter, and indicating three sons born in Mexico). The applicant’s G-325A, Biographic Information Form, indicates that she married ██████████ a 38-year-old native of Guatemala, on January 22, 2002, but the record does not contain a copy of the couple’s marriage certificate.

asserts that he is suffering hardship as a result of the separation from his wife. In support of the hardship claim, ██████████ indicates that he had an operation in 2005, and that he needed his wife to help him while he was incapacitated. *See Letter of ██████████*, dated Dec. 26, 2005; *Surgery Instruction Form* (indicating lumbar surgery on October 5, 2005). ██████████ stated that he was working less because he was not full recovered, and he needed his wife’s economic assistance to help him support his elderly parents in Guatemala. *See Letter of ██████████ supra*. Additionally, ██████████ noted the couple’s dream of buying a house and starting a business in the United States, which would not be possible in Mexico or in Guatemala. *Id.* Finally, ██████████ discussed his wife’s separation from her children, and mentioned his wife’s desire to complete her education and to pursue work as an interpreter or social worker. *Id.*

Assuming the validity of the applicant's marriage to ██████████ the applicant has not provided sufficient documentary evidence to support her claim that the denial of the waiver imposes extreme hardship on ██████████. For instance, the record does not reflect an ongoing relationship between a mental health professional and ██████████, 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). Additionally, there is no evidence in the current record to support the applicant's contention that ██████████ 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). Although ██████████ noted that it would not be possible to buy a house or start a business in Mexico or Guatemala, the record lacks documentary evidence to support these claims. See *Matter of Soffici*, 22 I&N Dec. at 165. Additionally, there is no evidence in the record to support ██████████'s claim that he would suffer extreme hardship based on an inability to support his parents in Guatemala. See *id.*

The record includes some evidence regarding the hardships suffered by the applicant's U.S. citizen daughter as a result of her separation from her mother. For instance, the applicant's daughter notes their close relationship, indicates that she misses her mother terribly, and states that she "think[s] about her not being here constantly and not knowing how much longer she will be gone is one of the worst feelings." See *Letter from ██████████* dated Aug. 23, 2006. Additionally, the applicant's daughter indicates that she and her mother are suffering from depression as a result of the separation. See *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated July 6, 2006; *Letter from ██████████ supra.*; *Letter from ██████████ State Farm Insurance Companies*, dated July 5, 2006; *Note from the Kearney Clinic*, dated July 6th. However, hardship to the applicant and to the applicant's children may not be considered in waiver proceedings under Section 212(a)(9)(B) of the Act. See 8 U.S.C. § 1182(a)(9)(B) (providing for a waiver "if it is established . . . that the refusal of admission . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien") (emphasis added).

Accordingly, although the applicant has presented some evidence of harm based on family separation, the record does not contain sufficient evidence to show that the hardships faced by her lawfully resident spouse, 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.