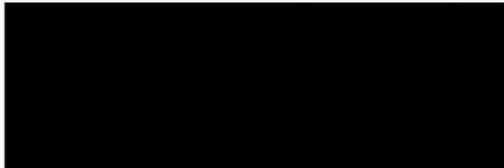




U.S. Citizenship
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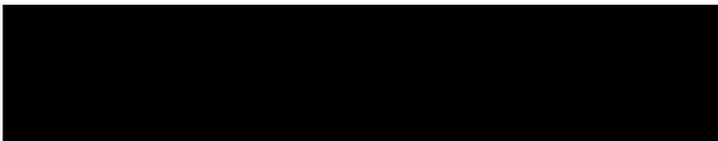
Office: MEXICO CITY (JUAREZ)

Date: JAN 29 2008

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and 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, pursuant to the record, admitted on October 13, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that she had entered the United States without inspection in March 2002 and had remained until October 2005, when she voluntarily departed the United States. The applicant was thus found to be inadmissible to the United States under 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 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), in order to be able to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 23, 2006.

In support of the waiver request, counsel submits a brief, dated October 17, 2006; a declaration from the applicant's U.S. citizen spouse, dated October 17, 2006; an unsigned letter from [REDACTED], dated October 16, 2006; a letter from the applicant's father-in-law, [REDACTED], dated October 16, 2006; an undated letter from the applicant's spouse's supervisor at Torrance Unified School District; medical records pertaining to the applicant's father-in-law and mother-in-law; support letters on behalf of the applicant; school records for the applicant; and photographs of the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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

(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 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...

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. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant, the applicant's relatives, and/or the applicant's spouse's relatives cannot be considered, except as it may affect the applicant's spouse.

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In support of the waiver, the applicant's spouse asserts that he will suffer emotional, psychological and physical hardship if the applicant is not permitted to reside in the United States. As the applicant's spouse states,

...I have been under constant severe stress and depression due to my wife's current immigration status. My wife is the love of my life and my companion (sic). Without my wife with me, my life will have no meaning. I would not be able to have a happy life without my wife's presences (sic). I would not be able to cope and function in society without her love and moral support. It would hurt us tremendously mentally...It would be unbearable if my wife is not

allowed to return to the United States. I would not be able to live a normal life without my wife's presences (sic)...

Letter from [REDACTED] dated October 4, 2005.

The applicant's spouse further states, in a declaration dated October 17, 2006,

...My wife [the applicant] is my whole world. We had made plans of what we were going to do for our future. The shock of not being able to have her in the United States is devastating...

...I am in a depressed state, only thinking of the predicament of my wife. I constantly feel nauseous, and I don't sleep. I don't eat, and I have lost weight from not having an appetite. I have been having migraine headaches that I can't seem to shake. I am distraught with fear of living without her.

When we can only communicate by telephone, I cry and cannot stop crying even after hanging up.

During my work hours and at other parts of the day, I feel dizzy and have to sit down because I feel faint. Sometimes I cry uncontrollably with no provocation, and cannot stop for sometime.

I feel exhausted all the time, certainly not myself. I am quiet around friends and family, with no desire to make the effort to be around others. I miss my wife terribly, and I know that I am suffering physically and mentally and emotionally without her.

It has been necessary for me to seek medical treatment, and use medication to be able to sleep and to deal with my nerves and general emotional condition...

Declaration of [REDACTED] dated October 17, 2006.

To support the applicant's spouse's statements, the applicant has provided an unsigned letter from [REDACTED] that references a "...presumptive diagnosis [of] fatigue and depression..." *Letter from* [REDACTED] dated October 16, 2006.

The applicant has not provided any medical documentation from a mental health professional describing in further detail the applicant's spouse's medical condition, its short and long-term treatment plan and its impact on his ability to live productively. Moreover, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the disorders referenced in the applicant's spouse's letter from 2005 and his declaration from 2006. Finally, the AAO notes that despite the medical conditions referenced in the applicant's spouse's declaration, the record indicates that he

is able to maintain long-term, full-time employment; his medical conditions clearly do not hinder his ability to work and assist in supporting his family, including his parents.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts a number of hardships were he to relocate abroad with the applicant. As the applicant's spouse states,

...It would be impossible for me to move from my job and my home to live in Mexico. I was born in the United States and have lived there all my life. It is imperative that my wife be able to join me in our home...

It would be impossible to leave the United States and live in Mexico in a country that I don't know and have no knowledge. It would be difficult to find employment. My Spanish is very poor. I could communicate minimally, but not to the standard to effect a good position of employment...

In my line of work, the position is unionized, and have been promoted from my original position, after passing the test, and working hard to get to the position that I am in, falling into tenure position and ultimately a retirement program.

If I were to leave my position, I would not be able to return to it, and my position would not be able to be held open. Because of the unionization of my job, the salary is above usual rate of pay for others doing a similar job...

My mother and father live in the front house and we live in the back house. My father and I together own two units on a lot.

My father has a medical condition; he has a clogged valve in his heart...He has high blood pressure and required medication, and constant monitoring.

If I were forced to leave the United States and live in Mexico I could not pay the mortgage, and that would mean that the property would have to be sold, and my parents would be out of a place to live.

...I am the only son of three children born to my parents. Both my sisters are younger than me, and there is a lot of responsibility towards them...

Supra at 2, 4-5.

In addition to the hardships referenced above, the record indicates that the applicant's spouse's parents were involved in a serious car accident. As explained by the applicant's spouse and corroborated through medical records and a letter from the treating physician,

...My Mother (Lawful Permanent Resident) and Father (U.S. Citizen), were in an automobile accident on December 16, 2006 approximately 7:00pm in Zacatecas Mexico, while on vacation.

My mother suffered a broken Clavial Bone, broken nose and massive bruising and swelling.

My Father, is in critical condition. He suffered massive injuries from being ejected from the vehicle including major injury to his spinal chord leaving him paralyzed. He was operated on in Mexico, and then medi-vac transported to the United States. He is currently in Kaiser Hospital in Los Angeles. He had stopped breathing for over 15 minutes, and fell into a comma (sic). He is still in a comma (sic), and he is in critical condition.

This is an extremely traumatic time for my family. I have the pressure of my whole family on me...

I am under tremendous strain from this burden... This pressure is added because I am the only son, and I provide for both my parents, as we share a home together in Torrance..

It will take a tremendous amount of time to recover from these injuries and of course some permanent damage...

Declaration of J. [REDACTED], dated February 9, 2007.

Based on the language barriers the applicant's spouse were to encounter were he to reside in Mexico, the financial hardship he would face leaving an established position with the Torrance Unified School District, a position that he has held since 1998, and based on his emotional and psychological ties to his parents and

siblings in light of the recent car accident to which his parents were critically injured, the AAO finds that the applicant's spouse would face extreme hardship if he were to relocate to Mexico to be with the applicant.

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 spouse will face extreme hardship if the applicant is removed from the United States. While the AAO finds that the applicant's spouse would encounter extreme hardship were he to relocate abroad with the applicant, it has not been established that the applicant's spouse would face extreme hardship were he to remain in the United States. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the emotional and psychological hardship he would face were he to remain in the United States without the applicant are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. 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.

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.