

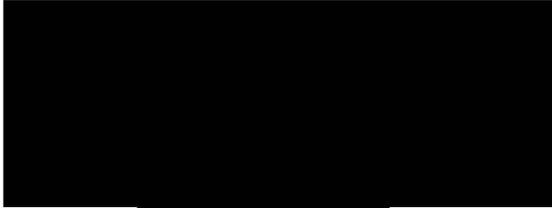
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



H4

FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO
CDJ2004 675 086 (RELATES)

Date: MAR 18 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, 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 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the record failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated February 6, 2006.

On appeal, the applicant's spouse states that she was in an automobile accident in 2003 which left her unable to walk as well as she did before the accident. The spouse also states that she and the applicant had a baby in 2005 and she finds that she is having problems caring for their baby because of her physical limitations. She states that she is suffering extreme hardship as a result of not having the applicant with her to help care for their child. *Spouse's Letter*, dated March 3, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in August 1999. The applicant remained in the United States until April 2005. Therefore, the applicant accrued unlawful presence from when he entered the United States in August 1999 until April 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his April 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the alien or his child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

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

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico and in the event that she resides in the United States, as she is not required to

reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states that she is suffering extreme hardship as a result of the applicant's inadmissibility because she needs him to help care for their child. *Spouse's Letter*, dated March 3, 2006. The applicant's spouse states that she has physical limitations as a result of injuries sustained in an automobile accident in 2003, has pain in her legs, and is unable to carry the baby carrier for their child. She states that as their baby grows she will not be able to effectively provide care for her. *Id.* The record contains medical reports for the applicant's spouse from Hermann Hospital in April 2003. These records show that on April 1, 2003 the applicant's spouse sustained a right open ankle dislocation, a left bimalleolar ankle fracture, and a left mid-shaft femur fracture. The records also show that she required a blood transfusion and, after surgery, required the use of a wheel chair. In a report dated, July 9, 2003, the applicant's spouse's doctor notes that the applicant's spouse is ambulating as tolerated with fracture boots on and uses a wheelchair for long distances. [REDACTED] states that the applicant's spouse will continue to wean herself to be weight-bearing as tolerated and that she will follow-up with the appropriate place including "LBJ" or "UTMB". [REDACTED] *Report*, dated July 9, 2003. The record contains no reports after July 2003. The AAO recognizes that the injuries sustained by the applicant's spouse were severe, but the record does not document the current status of her recovery. The last report on record was taken three months after the accident and the AAO cannot determine, more than five years after the last report on record, the condition of the applicant's spouse's physical limitations and how she would benefit from the presence of the applicant. 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)).

In addition, in a letter submitted with the initial waiver application, the applicant's spouse stated that she was having a difficult pregnancy and that not having the applicant with her was causing her stress. She also states that the applicant is not able to find a steady job in Mexico, but that he has been offered a job in the United States. *Spouse's Letter*, dated October 27, 2005. The record contains no other information and/or documentation related to life in Mexico or the applicant's spouse's and child's ability to relocate to Mexico to reside with the applicant.

Thus, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. The record does not reflect the current status of the applicant's spouse's condition, how this condition affects her daily life and how the applicant's presence would better her situation. Furthermore, the record contains little information about life in Mexico and the applicant's spouse's and child's ability to relocate to Mexico and live with the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.