

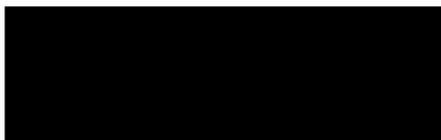
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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Services**



H6 HZ

FILE: AAO 07 199 50014 Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 719 128 (RELATES)

Date:
DEC 08 2009

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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).

A handwritten signature in cursive script that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico, the husband of a U.S. citizen, the father of a U.S. citizen daughter,¹ and the beneficiary of an approved Form I-130 petition. The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife and daughter. The district director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, the applicant's wife stated, "Change of circumstances, not able to support ourself financially." [Errors in the original.] Although the applicant and his wife did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

On the Form I-130 Petition for Alien Relative, the applicant's wife, who signed that form on November 15, 2002, indicated that the applicant entered the United States without inspection during 1995.

¹ The applicant stated, on the Form I-601 waiver application, that he has a U.S. citizen daughter. The applicant's wife stated, in a letter dated November 9, 2005, that the applicant has a U.S. citizen daughter. The record contains no evidence to support that assertion, but the AAO notes that, in any event, whether the applicant has a U.S. citizen daughter is not directly relevant to the approvability of the waiver application.

On a Form DS-230 Application for Immigrant Visa and Alien Registration dated September 26, 2005, the applicant stated that he had lived in Texas since 1995. On a G-325A Biographic Information form, which he signed on November 9, 2005, the applicant, when asked for his past five years' residential history, confirmed that he had lived in Texas from 2000 until the date of that form.

The applicant submitted his Form I-601 waiver application on November 9, 2005 in Ciudad Juarez, Mexico, which indicates that he had, by that date, left the United States. The record does not demonstrate that the applicant ever attained any legal status in the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until November 9, 2005, a period of more than one year. The AAO finds, therefore, that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for ten years after November 9, 2005, the date he left the United States, which period has not yet ended. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and whether it should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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 or his daughter is not directly 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 wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 nonexclusive list of 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 has held:

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).

In a letter dated November 9, 2005 the applicant's wife stated that she cannot afford daycare for her daughter and if the applicant does not return from Mexico, she will be obliged to take a full-time job and she will definitely lose the family home. She did not state where she and her daughter would live if the family home were lost.

In a letter dated January 26, 2007 the applicant's wife stated that the last two months had been very difficult financially because her husband earned the majority of the family income and paying the family bills without his income contribution is very difficult. She stated that she would probably require public assistance soon. She also stated that telling her daughter that her father cannot come home and seeing the daughter cry is very stressful.

Two scenarios must be considered in the analysis of whether the failure to approve the waiver application would cause the applicant's wife extreme hardship. The applicant must demonstrate that if he remains in Mexico, with or without his child, and his wife remains in the United States, that will cause his wife extreme hardship. The applicant must also show that if he remains in Mexico

and his wife and child join him, that would cause his wife extreme hardship. The AAO will first consider the result if the applicant remains in Mexico and his wife remains in the United States.

The applicant's wife has claimed that paying the family bills on her current income is very difficult. She stated, in her November 9, 2005 letter, that the situation would force her to seek full-time employment and, in her January 26, 2007 letter, that she would likely require public assistance. The applicant's wife also stated that she is unable to make the payments on the family home, and will lose it. Because the applicant's wife did not indicate where and how she would live if the family home were lost, she has not demonstrated the degree of hardship that loss would cause her. She also has not demonstrated the degree of hardship that accepting public assistance would cause her.

Further, the applicant's wife did not provide a full accounting of her income and expenses. Without knowing the income available to the applicant's wife and the expenses she is obliged to pay, and the consequences of being unable to pay those bills, the AAO is unable to make an independent determination that failure to approve the waiver application would result in financial hardship which, when combined with the other hardship factors in this case, will rise to the level of extreme hardship.

The other hardship factor the applicant's wife has raised in her letters is the emotional hardship of separation, both that caused to her directly, and that caused to her as a byproduct of her daughter's emotional distress.

Separation from one's spouse or parent is, by its very nature, a hardship. The AAO accepts that this hardship to the applicant's child causes the applicant's wife some additional hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases. The record contains no indication that the emotional hardship wrought by the applicant's absence from his family is any greater than the emotional hardship one would expect in a typical case of the removal of an alien relative. The evidence does not demonstrate that, if the applicant remains in Mexico and his wife remains in the United States, the arrangement will cause her emotional hardship which, when combined with the other hardship factors in this case, will rise to the level of extreme hardship.

The record does not demonstrate that, if the applicant remains in the Mexico and his wife remains in the United States, his wife will suffer extreme hardship. The remaining scenario is that of the applicant remaining in Mexico and his wife joining him to live there.

The applicant's wife stated, on the Form I-130 petition, that she was born in Allende, Nuevo Leon, Mexico on January 20, 1984. She received her U.S. citizenship on September 27, 2002, prior to which she was a citizen of Mexico. Although moving from the country in which one prefers to live necessarily entails some degree of hardship, the record contains no evidence to demonstrate, or even suggest, that it would cause the applicant's wife extreme hardship.

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 faces extreme hardship if the applicant's waiver

application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties that typically arise when a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

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), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.