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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



H6 #2

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 08 2009
CDJ 2004 755 019

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.

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).

Perry Rhew
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 applicant, Ms. Rocio Arais de Jauregui, is a native and citizen of Mexico who was 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 is the spouse of Mr. Domingo Jauregui, a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2006. The applicant filed a timely appeal.

On appeal, Mr. Jauregui states that since separation from his wife and children he has had depression and high blood pressure. He indicates that he is worried about his wife and U.S. citizen children and about losing his house, as it is hard paying two rents and double expenses. Mr. Jauregui indicates that his children have been sick in Mexico and he wants them educated in the United States.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - 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 . . . 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.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant accrued unlawful presences from when she entered the United States without inspection in July 2000, until

December 2005, when she left the country and triggered the ten-year-bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). That provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

The waiver 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 an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her two U.S. citizen children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant’s qualifying relative and include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines “whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including the psychological evaluation, medical records, birth certificates, and the December 9, 2005 letter by the applicant’s husband.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record indicates that [REDACTED] sought professional assistance for depression on November 29, 2006, when the saw [REDACTED] old [REDACTED] he was under stress for the past year due to separation from his family members and had been increasingly drinking alcohol because of depression and stress. Dr. Bhardwaj found that [REDACTED] had elevated blood pressure as a result of stress and he prescribed an antidepressant and sleeping pills for [REDACTED] insomnia, and scheduled to see [REDACTED] again.

The psychological evaluation by [REDACTED] of [REDACTED] which is dated July 10, 2007, states that [REDACTED] reported having used crack and cocaine for sometime until he met the applicant in 2001, and that she helped him turn his life around. He quit using drugs at the age of 23, and his life became stable after his marriage to the applicant. Since his wife left the United States, [REDACTED] reported that he initially visited his family every weekend in Mexico, but depleted their savings. [REDACTED] reported not keeping up with his finances and drinking himself to sleep every night. He reported that he did not seek medical advice for his depression, and instead enrolled in a dental assistance program to pass the time and stay away from drinking. [REDACTED] reported that he had a panic attack at work and was given an antidepressant medication by his personal physician, but that he did not take the medication. [REDACTED] symptoms suggest a major depressive disorder.

[REDACTED] indicates that he is concerned about separation from his wife and children. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

In his meeting with [REDACTED] in November 2006 and his meeting with [REDACTED] and [REDACTED] in July 2007, [REDACTED] reports a history of alcohol abuse and dependence on his wife in helping him to maintain sobriety. In light of the documentation in the record establishing that Mr. [REDACTED] started drinking again without the support of his wife, the AAO finds that [REDACTED] would experience extreme hardship if he were to remain in the United States without the applicant.

With regard to joining his wife to live in Mexico, [REDACTED] states that Mexico is not a good place

to be economically. However, there is no documentation in the record of the economic conditions in Mexico. 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, [REDACTED] fails to explain how he would experience extreme hardship as a result of the economic conditions in Mexico.

Although [REDACTED] states in his letter dated December 2, 2006, that he wants his children educated in the United States, he does not explain why he would experience extreme hardship if they were educated in Mexico.

In his letter dated December 9, 2005, [REDACTED] conveys that his daughter was treated in a hospital for breathing problems and was diagnosed with a cyst. If the problem returns, he states that the doctors and pediatricians who are familiar with her illness are in the United States. He further states that his son was sick and is receiving treatment in Bakersfield, California.

Even though [REDACTED] children have received medical treatment in the past, the submitted medical records do not suggest that either child has a serious medical condition requiring ongoing treatment. The fact that [REDACTED] children had obtained medical care is not sufficient to establish extreme hardship to [REDACTED] if his children were to live in Mexico.

When considered both individually and collectively, the hardship factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.