

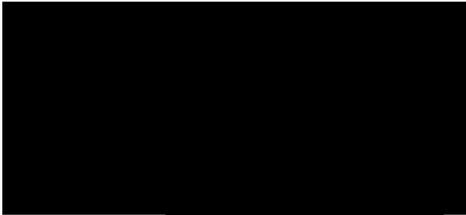
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H6

FILE: [REDACTED]
(CDJ 2004 717 671)

Office: CIUDAD JUAREZ, MEXICO Date: APR 02 2010

IN RE: [REDACTED]

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

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 cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Office 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 of Mexico and a dual citizen of Mexico and Canada. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to obtain a benefit under the Act through fraud or willful misrepresentation. He is married to a naturalized United States citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The Officer in Charge concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 9, 2007. The Officer in Charge also noted that the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act and had failed to file the Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal.¹

On appeal, the applicant states that he is sorry for having violated U.S. immigration law and that, although his situation in Mexico may not be deemed extreme hardship, it has been hard on his family.

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

(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.

....

¹ The Officer in Charge correctly found the applicant to be inadmissible under section 212(a)(9)(A)(i) of the Act, based on his 2000 expedited removal. Although the applicant was inadmissible for five years, he returned to the United States in January 2001 without seeking an exception under section 212(a)(9)(A)(iii) of the Act. Accordingly, he remains inadmissible to the United States and must file the Form I-212.

(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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

The record indicates that the applicant entered the United States in April 1999 using his Canadian passport and departed voluntarily in September 2000. The applicant subsequently attempted to enter the United States on October 9, 2000 but was expeditiously removed under section 235(b)(1) of the Act, triggering a five-year bar to re-entry. In January 2001, the applicant again entered the United States on his Canadian passport and remained until he voluntarily departed in August 2005. Documentation in the record indicates that the applicant worked during each of his nonimmigrant stays in the United States. Based on the applicant's attempts, unsuccessful and successful, to enter the United States as a nonimmigrant when it was his intention to work and live in the United States, he is inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact.

The AAO does not, however, find the record to establish that the applicant is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having resided unlawfully in the United States for periods in excess of one year. The record indicates that the applicant entered the United States in April 1999 and January 2001 using his Canadian passport. The AAO notes that Canadian nonimmigrant visitors are generally not issued Form I-94s, Arrival Departure Records, and are treated as having been admitted for duration of status. As such, they accrue unlawful presence only

after a status violation has been determined by United States Citizenship and Immigration Services (USCIS) or an immigration judge. The record does not contain evidence that establishes that the applicant was issued Form I-94s at the time of either of his nonimmigrant admissions to the United States. Neither is there evidence that he was previously determined by USCIS or an immigration judge to have violated his nonimmigrant status. Accordingly, the AAO does not find the applicant to be admissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence. It notes, however, that, as the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, a determination of extreme hardship under section 212(i) would also satisfy the requirements for a section 212(a)(9)(B)(v) waiver of unlawful presence.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission would impose an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardships to the applicant or his children² are not directly relevant in section 212(i) proceedings and will be considered only insofar as they result in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez*, 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 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

² The applicant’s spouse states that she and the applicant are the parents of three United States citizen children. The record, however, contains no documentation, *e.g.*, birth certificates, in support of this claim.

The record includes, but is not limited to, statements from the applicant, his spouse and the applicant's mother- and father-in-law; a copy of the applicant's spouse's naturalization certificate; and a copy of the applicant's marriage license. The applicant has also submitted a document in the Spanish language that is not accompanied by a certified English-language translation as required by the regulation at 8 C.F.R. 103.2(b)(3). Accordingly, it will not be considered. With this exception, the entire record was reviewed and all relevant evidence taken into account in rendering this decision.

On appeal, the applicant's spouse asserts that trying to obtain legal status for the applicant has cost them thousands of dollars. She states that they have had to sell their real estate, expend their savings to live abroad and are now required to borrow money to continue the applicant's immigration case. The applicant's spouse also states that she has lived in Kansas all her life, her entire immediate family lives in Kansas and she does not speak Spanish. She further asserts that the family's standard of living has declined greatly in Mexico as their income has decreased from \$24,000 in the United States to \$8,000 in Mexico. The applicant's spouse also states that her three children are U.S. citizens.

The record includes a statement from the applicant's mother- and father-in-law asking that the applicant and his spouse be allowed to return to the United States.

An examination of the record does not reveal any documentation supporting the applicant's spouse's assertions of financial hardship in Mexico. There is no evidence that she and the applicant have had to sell any property, expend their savings, or borrow money to survive. The record also fails to document the income of the applicant 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)). The AAO also notes that although the record establishes the applicant as a citizen of Canada, it does not address how the applicant's spouse would be affected by relocating to Canada in the event the applicant's waiver request is denied. Accordingly, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico or Canada with the applicant.

Extreme hardship to a qualifying relative must also be established if he or she remains in the United States. The applicant's spouse states that she would never choose to raise her children in a single parent home and that is why she joined the applicant in Mexico. She does not, however, assert that she would experience hardship as a result of remaining in the United States without the applicant and the record contains no documentary evidence relating to such hardship. Therefore, the AAO finds that the applicant has failed to establish that his spouse would experience extreme hardship if he were excluded and she resided in the United States.

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 would face extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468

(9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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(i) of the Act, the burden of proving eligibility rests 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.