

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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**

#6



FILE: [REDACTED]
(CDJ 2004 857 270)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: APR 13 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).

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, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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. 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. He is married to a U.S. citizen, is the father of two U.S. citizens and is the stepfather of two U.S. citizens.. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 16, 2007.

On appeal, the applicant's spouse asserts that she is experiencing extreme hardship due to the applicant's exclusion.

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.

....

(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.

The record indicates that the applicant entered the United States without inspection in 1987 and remained until he departed in April 2003 under an order of removal.¹ Therefore, the applicant was

¹ The AAO notes that the record establishes that, on July 18, 2002, the Board of Immigration Appeals granted the applicant voluntary departure from the United States for a period of 30 days, i.e., until on or about August 17, 2002, with

unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provisions under the Act until his 2003 departure. As the applicant is seeking admission within ten years of his last departure from the United States, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.²

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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, his children or stepchildren is not directly relevant to a determination of extreme hardship in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to the applicant's spouse, his only 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

an alternate order of removal. The applicant filed a motion to reopen and a motion to reconsider with the Board of Immigration Appeals, which were denied on March 20, 2003. Accordingly, as the applicant did not leave the United States until April 2003, he departed under an order of removal and is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii)(II) of the Act for ten years from the date of his 2003 departure. To seek an exception from this inadmissibility, the applicant must file the Form I-212, Application for Permission To Reapply for Admission Into the United States After Deportation or Removal.

² The AAO notes that the record indicates that the applicant was convicted of vandalism in 1997 under section 594(a) of the California Penal Code. The AAO will not, however, analyze whether the applicant's conviction is for a crime involving moral turpitude as the maximum sentence for this crime is imprisonment of no more than one year and the applicant was not sentenced to any term of imprisonment. Therefore, even if the applicant were found to have committed a crime involving moral turpitude, his conviction is subject to the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act and would not bar his admission to the United States under section 212(a)(2)(A)(i)(I) of the Act.

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 the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to, statements from the applicant's spouse; copies of a mortgage statement and a utility bill; copies of undated notices, an undated statement and a March 30, 2006 note from [REDACTED] and a statement from [REDACTED]

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's spouse states that she has Diabetes Mellitus, and that, due to the applicant's absence, she has had to work two jobs which has resulted in the worsening of her health. She states that her heavy workload and the stress she is under in the applicant's absence have resulted in uncontrolled glucose levels. The applicant's spouse further states that she has always relied on the applicant to take care of her medication and treatment in general, as well as to provide her with moral and emotional support. The applicant spouse asserts that she is losing her vision and that she is sometimes unable to see while driving. She states that she would not have to drive if the applicant were in the United States. The applicant's spouse also indicates that she needs the applicant in the United States so that she can have the cartilage in one of her knees replaced, surgery that will incapacitate her for two months. She further contends that she relies on the applicant financially, and that if he were in the United States, he would help her care for her sons.

The record includes the following documentation of the applicant's spouse's diabetes: two undated medical notices sent to the applicant's spouse by [REDACTED] alerting her to the fact that her diabetes is not under control; a March 30, 2006 note written by [REDACTED] that indicates the applicant's spouse "has diabetes and is on medications;" and an undated statement from [REDACTED] that reports the applicant's spouse is working 12-14 hour days to meet her financial needs and, thereby, hindering the effective control of her diabetes. In this statement, [REDACTED] asserts that if the applicant's diabetes is not controlled, she will develop complications, which may include blindness, limb amputations, early strokes and heart attacks and kidney problems. [REDACTED] also states that the applicant's spouse requires unspecified medical care and surgery, and is having difficulty finding time to take care of these needs. The AAO notes that the record also contains a statement from an optician who reports that the applicant's vision is not as good as it was previously.

While the AAO does not find the record to support all of the applicant's claims regarding her health care needs, it accepts [REDACTED] conclusions regarding the uncontrolled nature of her diabetes, its potential impacts on her health, and the improvement that the applicant's presence could make in her condition. The AAO also observes that the only other potential care givers established by the record are the applicant's spouse's sons. Having reviewed the record before it, the AAO finds that when

the applicant's health condition and the normal hardships created by separation are considered in the aggregate, the applicant has established that his spouse would experience extreme hardship if his waiver request were to be denied and she remained in the United States

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant's spouse asserts that if she relocated to Mexico, her family would be unable to meet its needs. She also states that she has been living in the United States since 1986 and would be unable to get used to living in Mexico because of the unemployment, poverty and violence. She also contends that she would be unable to afford the medical treatment she needs in Mexico.

While the AAO acknowledges the applicant's spouse's claims, it does not find the record to support them. The applicant has not submitted documentary evidence, e.g., country conditions materials, to demonstrate that he and his spouse would be unable to obtain employment in Mexico to support their family, that they would be subject to violence in the Mexican state of Morelos where he lives, or that his spouse would be unable to obtain adequate health care for her diabetes or other medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Accordingly, the applicant has not established that his spouse would experience extreme hardship if she were to join him in Mexico.

As the applicant has not demonstrated that his spouse would experience extreme hardship whether she remains in the United States or relocates to Mexico, he has not established extreme hardship under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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.