

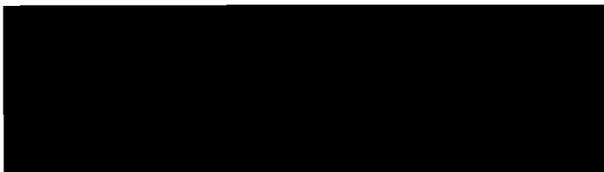
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



H6

FILE:

CDJ 2004 653 087

Office: MEXICO CITY, MEXICO
(CIUDAD JAUREZ)

Date: **AUG 02 2010**

IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico, Mexico City. 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 United States citizen. 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 September 14, 2007.

On appeal, the applicant's spouse states that she is suffering financially and emotionally due to the applicant's absence, and asks that his waiver application be approved.

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 March 2000 and remained until he departed voluntarily in May 2006. As the applicant has resided unlawfully in

the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.¹

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 is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results 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.

The record includes, but is not limited to; statements from the applicant’s spouse; court records; copies of loan documents for an August 13, 2007, car loan; a credit card and satellite television bill

¹ The record indicates that the applicant was charged with possession of a controlled substance – paraphernalia. A statement from the Attorney General’s office indicates that the charge was *nolle prosequi*, and as such, does not render the applicant inadmissible under § 212(a)(2)(A)(i)(II) of the Act.

statement; copies of school transcripts pertaining to the applicant's spouse; and statements in Spanish.²

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

The applicant's spouse has submitted several statements. She asserts that she has been unable to continue her education due to the applicant's inadmissibility, and that she and her son are suffering emotionally due to his absence. She asserts she is behind on her rent, has been unable to maintain her expenses, and has had to assume a car loan for her brother.

An examination of the record reveals there is insufficient evidence to establish that the applicant's spouse is experiencing extreme hardship. As noted above, children are not qualifying relatives in this proceeding, and any impact on them is only relevant as it impacts a qualifying relative, in this case the applicant's spouse. There is nothing in the record which indicates the applicant's son is experiencing hardships beyond the norm, or to such a degree that it is creating an extreme hardship for the applicant's spouse.

The applicant's spouse has submitted some bills and loan documents, but they are not sufficiently probative to corroborate her assertions of economic hardship. There is no documentation that she was obligated to assume a \$17,612 car loan for her brother, or that she is behind on rent, or that her parents and family are unable or unwilling to assist her in mitigating the impacts created by the applicant's absence.

While the AAO recognizes that the applicant's inadmissibility will lead to emotional difficulties due to separation, the record in this case does not indicate that the emotional impacts rise above the norm, or to such a degree as to constitute an extreme hardship. In addition, being unable to attend college or further one's education in the United States is not a significant hardship. *See Matter of Ige*, 20 I&N 880 (BIA 1994)(reasoning that the fact that educational facilities or opportunities may be better in the United States is not an extreme hardship).

As noted above extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. The applicant has not asserted any impacts on the applicant's spouse if she were to relocate with him to Mexico. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant.

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 faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or

² The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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(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.