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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**

*He*

FILE:

Office: MEXICO CITY, MEXICO

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:

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 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. She 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 her last departure. She is married to a United States citizen. She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 4, 2007.

On appeal, counsel for the applicant asserts that the applicant's spouse is experiencing extreme hardship as a result of the applicant's inadmissibility.

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 in 1995 without inspection, and resided in the United States until October 8, 2006, when she voluntarily departed to Mexico. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until October 8, 2006, and is now seeking admission within ten years of her last departure from the United States. Accordingly,

the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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, counsel's brief; statements from the applicant's spouse; statements from family members; and copies of financial documents such as money transfer receipts, mortgage documents, utilities invoices, pay stubs and car titles.

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

The applicant's spouse has submitted a statement which asserts briefly that he cannot join his spouse in Mexico because he needs to "provide for his wife and children." While the AAO recognizes that

the applicant's spouse may prefer to reside and work in the United States, there is no evidence in the record establishing that he would be unable to reside and work in Mexico, or that he would experience any extreme hardship if he were to relocate to Mexico with his spouse. *See Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994)(stating "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy.) There is insufficient evidence to establish that the applicant's spouse would experience extreme hardship if he were to relocate to the Mexico with the applicant.

Counsel for the applicant asserts the applicant's spouse will continue to experience extreme emotional hardship due to the applicant's inadmissibility, and has problems sleeping, eating and concentrating. The record contains statements from the applicant's spouse, as well as family members of the applicant's spouse attesting to the applicant's spouse's emotional hardship. While the AAO acknowledges the sentiment of this evidence, the AAO must make an objective determination of extreme hardship. The record does not contain any objective evidence that the applicant's spouse is experiencing an emotional impact that rises above those normally experienced by the relatives of inadmissible aliens.

The record contains copies of financial documents, as noted above, and counsel has asserted that the applicant's spouse will experience financial hardship. An examination of the documents submitted does not reveal any financial hardship which rises above the norm. While it is recognized that the applicant's is bearing the additional burden of supporting his spouse in Mexico, this is a common impact and is not otherwise distinguishable. The evidence does not indicate that the applicant's spouse is any actual danger of losing his property or employment, nor is there evidence that the applicant's spouse is unable to meet their financial obligations, has accrued any significant debt or is facing bankruptcy. Based on the evidence in the record the financial impact on the applicant's spouse does not significantly impact any determination of extreme hardship.

When examined in an aggregate context, the impacts asserted do not rise above those commonly associated with the inadmissibility of a family member. *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) (holding that common results of the bar, such as separation, financial difficulties, etc., in themselves are insufficient to warrant approval of an application absent other greater impacts.)

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience emotional difficulties and bears an additional financial burden. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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 her 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 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) 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.