

**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**

HG

[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date: **AUG 12 2010**

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:

[Redacted]

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,

[Redacted]

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 record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), in order to reside in the United States with her United States citizen husband and child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 4, 2007.

On appeal, counsel for the applicant states that the director erred in denying the application and asserts that the applicant has established extreme hardship. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record includes counsel's brief, letters from [REDACTED] the applicant's spouse, detailing the hardship he would suffer if the applicant is forced to remain in Mexico; letters from the applicant's spouse's parents, [REDACTED]; a letter from [REDACTED] the applicant's brother-in-law; and, various documents pertaining to properties owned by the applicant's spouse. *See counsel's brief and attachments.* The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(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.

In the present application, the record indicates that the applicant entered the United States in April 1994, without inspection. On January 25, 2003, the applicant's husband filed a Form I-130 on behalf of the applicant. On August 5, 2004, the applicant's Form I-130 was approved. In September 2006, the applicant departed the United States for Mexico. On October 11, 2006, the applicant filed a Form I-601. On December 4, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence [REDACTED] is attempting to seek admission into the United States within 10 years of her September 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains several references to the hardship that the applicant's child would suffer if the applicant were denied admission into the United States. A waiver under section 212(a)(9)(B)(v) of the Act is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's child will not be considered, except as it may cause hardship to the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. 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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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. The BIA has also held:

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.

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *[REDACTED]* v. *INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *[REDACTED]*, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only "in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant does not establish extreme hardship to her husband if he remains in the United States. In his letters, the applicant's husband states that he depends on the applicant to assist in running a restaurant of which he is a part-owner. Counsel states that the applicant is needed to assist in managing the family's rental properties. Counsel also states that the rental business has suffered since the applicant left because "[the applicant] 'screened' tenants much better than [her husband] did." It is noted, however, that the applicant's husband does not provide evidence pertaining to his ownership of the restaurant and a description of his responsibility for the operations of the restaurant and the nature of the services the applicant would provide to enable an assessment of the financial hardship, if any the applicant's spouse would suffer without the applicant's contribution in the business operations. Likewise, counsel does not provide financial details of the rental apartments and description of the services the applicant would provide in managing the properties. It is also noted that the applicant does not provide details of the household income and expenses. Without these details, the AAO is unable to assess the nature and extent of financial hardship, if any, the family will face due to the applicant's absence. It is noted that the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States.

The applicant's spouse states that the applicant is needed for emotional support, and his mother states that "Since they have been married [the applicant's spouse's] life has acquired direction ... [and] ... his life would be devastated without her." It has not been established, however, that these particular hardships are atypical of individuals separated as a consequence of removal or inadmissibility.

Counsel asserts that the applicant's spouse will suffer hardship in Mexico because he does not speak Spanish and he will not be able to obtain employment or be able to operate his tree service business

there. However, counsel does not submit evidence of the living conditions in Mexico for the applicant and the applicant's spouse, nor does counsel provide evidence as to whether the applicant is employed in Mexico and the family's living expenses in Mexico. Therefore, the AAO cannot make an assessment of the applicant's financial and living conditions in Mexico.

Counsel states that the applicant would be under emotional stress if he is not the "breadwinner" and has to depend on his wife to support the family; that "there will be tension... [and] ... if both [the applicant and her husband] have to work to support themselves, this will also cause difficulties," and the applicant and her husband intended on home schooling their children but that "could be difficult in Mexico." The applicant's spouse states that he fears for the health of his wife and child in Mexico because while his wife was in the United States she had to be rushed to a hospital on two occasions and their infant son suffers from bronchitis, and his wife and child now live with his wife's parents in a remote village in Mexico with few residents. The applicant, however, does not provide details and supporting evidence of their medical conditions and evidence of the nature of medical services, or lack thereof, in the area where his wife resides in Mexico, or why he and his family cannot relocate to an area in Mexico with adequate healthcare services.

Counsel states that the applicant's spouse does not have relatives in Mexico and that he would experience hardship in Mexico as a result of separation from his family in the United States and due to the loss of his career path with his employer. Counsel also states that the applicant's spouse has never lived in Mexico, and will have to adjust to a new culture there although he does not speak Spanish. The AAO acknowledges that the loss of career opportunities can be difficult, and added to the stress of adjusting in a country where he does not have family, and is not familiar with the culture and language, these hardships are beyond that which is typical in circumstances where individuals relocate abroad.

For these reasons, the AAO finds that the applicant has established that her spouse would experience hardship in Mexico if he relocates there with the applicant.

However, as discussed above a review of the documentation in the record fails to establish the existence of extreme hardship in the United States to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) of the Act, the burden of proving eligibility remains entirely 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.