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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**

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FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

FEB 04 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:

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).

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 naturalized United States citizen and has one U.S. citizen child. 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 November 17, 2006.

On appeal, counsel for the applicant asserts that the District Director failed to consider all the relevant facts and circumstances that prove extreme hardship to the applicant's spouse.

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 establishes that the applicant entered the United States without inspection in March 1999 and remained until she departed voluntarily in February 2006. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 or her child 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; a statement from the applicant's sister-in-law; a statement from [REDACTED] Resurrection Health Care, Chicago, Illinois; a statement from [REDACTED] of Michael Reese Hospital; a statement from [REDACTED] other medical documentation pertaining to the applicant's spouse's mother; a copy of an article from *La Raza*; copies of mortgage statements, bank statements, utility bills and rent receipts; a letter from the applicant's employer; the applicant's spouse's 2005 tax return; and pay stubs for the applicant's sister-in-law.

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

Counsel asserts that it would be an extreme hardship for the applicant's spouse if he were to relocate to Mexico with the applicant. Specifically, counsel states that the applicant's spouse would be

unable to find employment in Mexico, and that his diabetic mother and mentally-handicapped brother, who depend on his income, would suffer greatly. Counsel further states that if the applicant's spouse were to relocate, his sister who needs his financial support to pay the mortgage, would lose her home. Counsel also asserts that, in the applicant's spouse's absence, his sister would have to try to support her mother, brother, her son and the applicant's spouse's daughter, which is impossible on her salary. Counsel states that this situation would cause the applicant's spouse unbearable hardship.

The applicant's spouse states that he cannot leave the United States because of his responsibilities to his family here and cannot move his mother and brother back to the town where he was born in Mexico because the conditions there are unimaginably difficult, including a lack of potable water. He also asserts that after spending so many years in the United States, he does not know what he would do for employment in the town where he grew up, that there are no jobs there and he has no special skills that he could put to use.

The record includes medical documentation for the applicant's spouse's mother, including a statement from [REDACTED] that establishes she suffers from diabetes and is scheduled for recurrent medical appointments to keep her diabetes under control. The record also includes a statement from [REDACTED] that reports the applicant's spouse's mother as having narrow angle glaucoma. A medical statement from [REDACTED] Resurrection Health Care indicates that the applicant's spouse's brother has been diagnosed with mental retardation and requires consistent supervision to accomplish daily tasks. However, while the record establishes that the applicant's spouse's mother and brother have significant medical conditions, it does not demonstrate that they are, as a result, dependent on him or that the applicant's spouse's mother is no longer able to provide care for her mentally challenged son. While the statement from [REDACTED] indicates that the applicant's spouse's mother is under treatment for diabetes, it does not establish that her medical condition has impaired her ability to function or that she requires a caregiver. The letter from [REDACTED] also fails to indicate how her diagnosis of narrow angle glaucoma affects the applicant's spouse's mother. The AAO notes that the record contains a letter from the applicant's employer, dated December 14, 2006, that states the applicant's spouse is spending too much time assisting his mother and brother, but does not find this statement, in the absence of medical documentation, to be sufficient to establish that the applicant's spouse's mother and brother are dependent on his care.

The record establishes that the applicant's spouse provides \$500 each month to his sister with whom he resides. In her statement on appeal, the applicant's spouse's sister states that he has been the head of their household since the death of their father and that, while she might own the house in which they live, she would not be able to pay the mortgage without his help. She also states that he pays for food, utilities, clothes and other costs. In his statement, the applicant's spouse provides a list of the household's monthly expenses. However, while the record provides copies of the applicant's sister-in-law's monthly mortgage payment, the household utility bills and the applicant's spouse's car payments, it fails to document the full range of the expenses claimed by the applicant's spouse. Moreover, while counsel claims that the applicant's spouse's mother and brother are financially dependent on him, there is no documentation in the record to support counsel's assertion and the

record does not clearly establish that the applicant's spouse's mother and brother reside with him and his sister. A prescription profile submitted for the record indicates an address for the applicant's spouse's mother that is different from that which appears on her Illinois State Identification Card, which lists the address where the applicant's spouse and his sister reside.

The record also fails to support counsel's assertion that the applicant's spouse would be unable to obtain employment in Mexico if he were to join the applicant. While the applicant's spouse states that there are no jobs in the town where he spent the first years of his life, the AAO finds the record to contain no documentation, e.g., published reports on the economic and employment conditions in that location or region, to support this claim. Further, although the applicant's spouse states that the applicant must reside in this location because her parents live there and she has nowhere else to go, there is no evidence in the record that demonstrates that the applicant and her spouse would be limited to this location if he joined her in Mexico. Accordingly, the record does not establish that the applicant and her spouse would be unable to obtain sufficient employment in Mexico to support themselves and financially assist his family in the United States.

The record also fails establish that the applicant's spouse would experience extreme hardship if the applicant were excluded and he were to remain in the United States. The applicant's spouse asserts that prior to her departure for Mexico the applicant cared for his mother and brother, their daughter and nephew, that she was the "glue" that held everything together and that, in her absence, he is falling apart inside. While the AAO acknowledges the applicant's spouse's claim, it notes, as previously discussed, that the record fails to establish that the applicant's spouse's mother requires the level of assistance described by the applicant's spouse or that she is no longer capable of providing the level of care required by the applicant's spouse's brother. The letter from [REDACTED] attesting to the applicant's mother's medical conditions, states only that the applicant's spouse's mother has diabetes and must attend recurring appointments. He does not address the severity of her diabetic condition, how it affects her ability to function or indicate that she requires a caretaker. The statement from [REDACTED] as previously noted, also fails to explain the nature of her diagnosis or what impact it has on the applicant's spouse's mother's quality of life or ability to take care of herself and the applicant's spouse's brother. The letter from [REDACTED] states only that the applicant's spouse's brother needs "consistent supervision to accomplish daily tasks," not that he requires someone "day and night to take care of him," as stated by the applicant's spouse. Accordingly, the record provides insufficient proof that the applicant's exclusion would result in an extreme hardship to her spouse based on his mother's and brother's care requirements.

Counsel also asserts that the applicant's job performance has been affected in the applicant's absence as he has often had to miss work in order to care for his daughter or to drive her to school. A letter from the applicant's spouse's employer submitted for the record indicates that his employer has found his personal life, specifically "running back and forth to help his elderly mother and mentally challenged brother," to be intruding on his duties at work and that if the applicant's spouse misses more time from work, his employment will be terminated. While the AAO acknowledges this statement from the applicant's spouse's employer, it again notes that the record fails to establish that his mother or brother require a level of assistance from the applicant's spouse that would jeopardize his employment. Further, as the applicant's spouse indicates that his sister's workday does not being

until 11am, the record also fails to establish that his daughter requires him to drive her to school in the morning. Therefore, the record also fails to establish that the applicant's absence is the cause of the applicant's spouse's reduced performance at his employment.

Counsel further states that the applicant's spouse will experience financial hardship because the applicant is not there to provide assistance in the home and he cannot afford to care for his children, his brother and mother without the applicant's assistance. As noted above, there is insufficient evidence to establish that the applicant's spouse's mother and brother are financially dependent on him. Without further objective evidence of the applicant's spouse's financial obligations explaining why he would be unable to afford child care or provide for his mother and brother, the record does not establish that the applicant's spouse would experience extreme financial hardship based on the applicant's exclusion.

The AAO also notes counsel's assertion that the applicant's daughter is suffering in school, and that the applicant herself is experience extreme conditions in Mexico. However, as noted above, hardship to the applicant or her child is not directly relevant to a determination of extreme hardship in these proceedings and the record does not document how any hardship they may be experiencing affects the applicant's spouse, the only qualifying relative. As such, the record also fails to establish that the applicant's spouse would experience extreme hardship if she were excluded and he remained 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. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish his hardship from that commonly associated with removal and exclusion, and it does not, therefore, 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.