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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 JAUREZ)

Date: JUL 12 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. 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 and has two U.S. citizen children. 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 October 29, 2007.

On appeal, counsel for the applicant states that the applicant's spouse is suffering emotional and financial hardship, and that the record establishes that the applicant's spouse will experience extreme hardship if the applicant is excluded.

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 April 2000 and remained until he departed voluntarily in September 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.

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; a statement from the applicant's spouse; statements from family members; copies of the applicant's spouse's divorce decree from a prior marriage and custody documents for the child born in that marriage; copies of birth certificates for the applicant's spouse and their children; a chart of the family ties the applicant's spouse has in the United States; a travel receipt and baggage claim ticket from one trip to Mexico; a single page medical document with hand written notes; a psychological profile of the applicant's spouse by [REDACTED] a copy of the Country Reports on Human Rights Practices,

published in 2006, by the U. S. State Department's Bureau of Democracy, Human Rights and Labor; and a letter from the applicant's spouse's employer.

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

Counsel asserts that the applicant's spouse has resided in the United States her entire life and has extensive family ties in the United States. She also states that the applicant's spouse would be unable to relocate to Mexico with the applicant because she could not find a job and could not take her young daughter due to child custody restrictions. Counsel further states that the applicant's spouse would have to quit her job in the United States, and would be unable to support her family in Mexico.

The AAO acknowledges the country conditions in Mexico, as well as the custody restrictions on the applicant's spouse's daughter from a previous marriage. The custody restrictions on the applicant's spouse's child from a previous marriage include having to seek permission for the child to relocate to another country. Based on this, the AAO finds it reasonable to assume that she would be unable to have her child relocate with her to Mexico, and would thus be forced to separate from her eight year old child for a period of over six years. Based on these facts the record indicates that the applicant's spouse would experience a hardship which rises above those normally experienced by the spouses of inadmissible aliens, and as such constitutes extreme hardship.

Although the record establishes that a qualifying relative would experience extreme hardship upon relocation with the applicant to Mexico, the applicant must also establish that a qualifying relative would experience hardship if the applicant was denied admission and she remained in the United States, separated from her spouse. With regard to the hardships experienced by the applicant's spouse if she were to remain in the United States during his period of inadmissibility, counsel asserts that the applicant suffers from Major Depression due to the applicant's inadmissibility, is currently taking medication for the condition, and that the applicant's inadmissibility will result in extreme emotional hardship. Counsel also states that the applicant's spouse is suffering financially and has had to move in with her mother, that the applicant's spouse's work and daily life is suffering from her trips to Mexico, and that travelling to Mexico to visit her husband and son are an additional financial burden.

The record contains a psychological profile of the applicant's spouse from [REDACTED] which states she is suffering a single episode of moderate Major Depressive Disorder. The evaluation lists the applicant's spouse's complaints as being stressed, worried and fearful, and that she has problems sleeping, lacks energy, and is anxious. The record contains a statement from a co-worker of the applicant asserting her demeanor has changed.

The record also contains another, single-page medical document with hand-written notes. This document is in the form of raw medical observations, and does not clearly address any diagnosis of, or make conclusions with regard to any physical condition of the applicant's spouse. It is not sufficient to corroborate any of the physical symptoms discussed by the applicant's spouse or Dr.

Nor does the record contain any other corroborating evidence, such as receipts or prescription information, indicating that she is taking medication for either physical or mental health conditions.

evaluation discusses the applicant's spouse's mental health complaints, as relayed to her by the applicant's spouse, but does not provide sufficient information to make a distinction between the emotional impacts on the applicant's spouse from those normally experienced by the relatives of inadmissible aliens. Neither the psychological evaluation or the co-worker's letter allows the AAO to draw a distinction among the impacts normally experienced due to the inadmissible of a family member – stress, anxiety or other related impacts - and as such do not rise to the level of extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the . The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety order suffered by the applicant's spouse. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. The fact that the symptoms and background described by lack any distinguishable impacts on the applicant's spouse with the impacts normally associated with the removal of a family member, and the fact that they are not supported by other, corroborating medical documentation verifying her physical symptoms, indicates that conclusions speculative, and diminish their value to a determination of extreme hardship.

Although counsel has asserted that the applicant's spouse will experience financial hardship due to the applicant's exclusion, the record does not contain sufficient evidence to establish this assertion. The record contains a single travel receipt for a trip to Mexico and the applicant's spouse has asserted that she now has to reside with her mother. However, this information does not contain documentary evidence explaining the necessity for relocating to her mother's residence or that frequent trips to Mexico are draining her financial resources. There is no breakdown of monthly bills, no evidence of accumulated debt, no evidence of savings or paid taxes, and no indication that the applicant's spouse is unable to meet her financial obligations. The AAO would also note that counsel has asserted that the applicant's spouse is working 14 hour days and is residing with her parents, indicating that the applicant's spouse is able to work, earn income and is able to rely on her parents for room and board. The applicant's spouse asserts in her declaration that her four-year-old son is residing with the applicant in Mexico because she works 14 hours a day. She states that she fears for her son's safety and health in Mexico. However, she has not demonstrated that she is unable to afford childcare for her son or that her parents and other family members would be unwilling or unable to care for him while she is working. The record does not contain sufficient evidence to establish that the applicant's spouse is experiencing any significant financial hardship.

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 he is refused admission. The AAO recognizes that the applicant's spouse may experience emotional impacts due to the

applicant's inadmissibility. 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 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.