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



U.S. Citizenship
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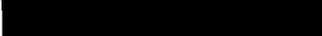
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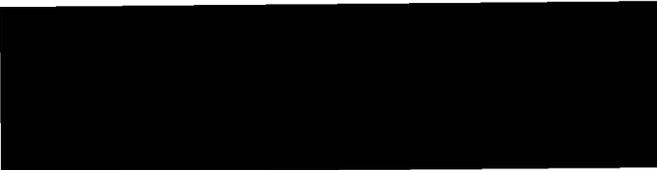
IN RE: Applicant:



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:



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 or reopen, 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 Officer in Charge (OIC), Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a citizen of Mexico who was found to be inadmissible to the United States under 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. The applicant is the spouse of a U.S. citizen, [REDACTED]. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The OIC concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, March 6, 2007. The applicant filed a timely appeal.

On appeal, counsel contends that the documentation submitted on appeal, which are the birth certificates and the psychological evaluation of [REDACTED] demonstrates that [REDACTED] would experience extreme hardship if the waiver application is denied.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in July 2001 and remained in the country until January 2006, when she left the country and triggered the ten-year bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 Attorney General [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 waiver under section 212(a)(9)(B)(v) of the Act 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 an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. citizen husband. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant’s qualifying relative and include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines “whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record. However, the AAO notes that the record contains a letter By Mr. Robles that does not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

- (3) Translations. Any document containing foreign language submitted to USCIS shall 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.

In that the letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins her to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of an applicant's waiver request.

In his psychological evaluation, [REDACTED] states that the Beck Depression Inventory results convey that [REDACTED] has significant depression due to separation from his wife and child, and the applicant contends that a point of great distress for her husband is that their daughter does not know him. [REDACTED] maintains that he must remain in the United States to work and financially support his wife and daughter. With regard to remaining in the United States without his wife and his daughter, who was born on April 15, 2004, [REDACTED] conveys that he is concerned about his daughter attending school in the village of [REDACTED] because its school is small and crowded, does not offer instruction in English, and will negatively impact her earning potential, as it has affected his. He conveys that he worries about his family's safety in Mexico due to kidnappings, the drug cartel, gang problems, and political corruption; and is distressed about the living conditions of his wife and daughter.

Family separation must be considered in determining hardship. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

The AAO is mindful of and sympathetic to the emotional hardship that is caused by family separation. We acknowledge that [REDACTED] will undoubtedly continue to experience some depression as a result of separation from his wife and his daughter and his concern about their well being. However, although [REDACTED] is distressed about his daughters not knowing him, the weight of his concern is diminished because he does not address why his daughter lives with his wife rather than with him. Even though he is concerned about her education in Jerez and the safety and living conditions of his wife and daughter there, he has not explained why they live in Jerez instead of another village or city in Mexico. Furthermore, the record is silent as to whether he or his wife has other relatives who live elsewhere in Mexico. The record before the AAO is not sufficient to show that the emotional hardship to be endured by [REDACTED], in remaining in the United States without his wife and child, is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan and Perez, supra*.

In considering all of the hardship factors, which factors are the depression [REDACTED] feels due to separation from his wife and child, his concern about their safety, living conditions, and his daughter's education in Mexico, the AAO finds that when the factors are combined and considered collectively, they fail to demonstrate that [REDACTED] will experience extreme hardship if he remained in the United States without his wife and children. [REDACTED] has not explained why his wife and daughter must live in Jerez instead of another village or city in Mexico, and he has not indicated whether they have other relatives who live elsewhere in Mexico. He has not fully explained the hardship of his wife and daughter in living with his wife's parents, nor has he addressed why his daughter is unable to live with him in the United States. [REDACTED] has experienced emotional hardship due to separation from his wife and daughter but not adequately demonstrated how he has been affected by separation from his wife and daughter in order to show that his emotional hardship is unusual or beyond that which is normally to be expected from an applicant's bar to admission. Thus, [REDACTED] fails to demonstrate that he would experience extreme hardship if he remains in the United States without his wife.

[REDACTED] asserts that he would live in poverty if he joined his wife to live in Mexico because in Jerez his livelihood would be limited to a low paying job in construction or as a field laborer; in trading cattle, of which he has no experience; or in the agricultural industry, which requires a tractor. However, the AAO finds this assertion of poverty is not persuasive because [REDACTED] has not explained why he must live in Jerez instead of a larger city, especially as he indicates that nearby cities may have employment and offer better educational opportunities for his daughter. Although [REDACTED] contends that he would have to live in a small house in Mexico with his wife, child, and his wife's family members, he fails to fully explain why this would cause him extreme hardship. We note that the psychological evaluation states that as a child and adolescent [REDACTED] lived with his parents and siblings in Jerez, where his father had bought a tractor and raised animals. The psychological evaluation by [REDACTED] a licensed psychologist, states that [REDACTED] receives the support of his parents, siblings, and extended family members who live in Denver, and that in Mexico he would become socially isolated, having contact only with the applicant's two brothers. The AAO notes, however, that no documentation has been provided of the legal status held by the family members of [REDACTED]s who live in Denver, Colorado.

The factors presented in this case, which are the applicant's spouse's concern about finding employment, having his daughter attend school, living with his in-laws, and separation from family living in the United States, when considered collectively, do show that [REDACTED] will endure some hardship living in Mexico with his wife and daughter; however, he has not shown that the hardship would be extreme. As previously stated, he has not addressed why he must live in Jerez instead of a city that would provide him with employment and a better education for his daughter, fully explained the hardship of living with his in-laws, addressed whether he has other relatives who live in Mexico, and provided documentation of the legal status of his family members living in Colorado. Consequently, [REDACTED] has not shown that the combination of hardship factors demonstrate that in joining his wife to live in Mexico he would experience extreme.

The factors presented in this case do not constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose is 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.