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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
and Immigration
Services

HP

MAR 10 2010

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 824 446

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:

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).

Michael Shumway

Perry Rhew
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 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 [REDACTED] a naturalized citizen of the United States. 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 director 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 District Director*, April 17, 2007. The applicant filed a timely appeal.

On appeal, [REDACTED] contends that his depression, which is due to separation from his wife, aggravates his diabetes and gastritis. He claims that his physician states that he needs his wife to get well.

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 1999 and remained in the country until March 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 [REDACTED], the applicant’s naturalized 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).

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.

With regard to [REDACTED] remaining in the United States without his wife, in his letter dated April 19, 2006, [REDACTED] asserts that he needs his wife in the United States because of his recent diagnosis of diabetes. The record contains prescriptions for medication and a health certificate stating that [REDACTED] has diabetes mellitus type 2, and gastritis. The letter by the administrator

with Pre Med Care Clinic dated May 2, 2007 conveys that [REDACTED] has been diagnosed with depression due to family separation and that because he does not have a relative to help him his condition may improve if his wife were available. The administrator avers that [REDACTED] has “multiple delicate medical conditions and may need home assistance for the following months/years.” [REDACTED] maintains that his wife is a full-time housewife and will provide him with the support and meals he needs. However, because [REDACTED] claims that he works part-time, the AAO finds that his health problems have not impaired his ability to function independently. Although the letter from the administrator avers that [REDACTED] may need “home assistance for the following months/years,” we find his ability to work demonstrates an ability to function without home assistance.

Even though [REDACTED] asserts that separation from his wife is a financial burden because of supporting both himself and his wife, he has provided no evidence of his income and expenses such as his wage statements, income tax records, remittances to his wife, or utility, telephone, and mortgage invoices, which evidence of his income and expenses could corroborate the assertion that financially supporting the applicant is burdensome. We further observe that the applicant has not explained why her adult sons and daughter who live in Mexico provide no financial assistance.

In his letter dated February 22, 2006, [REDACTED] conveys that even though he has been married for only two years he and his wife have known each other for more than five years. He declares in his August 22, 2009 letter that being without his wife for three years has been difficult and he expresses concern about her safety in Mexico due to kidnappings and robberies. The administrator with Pre Med Care Clinic conveys that [REDACTED] was diagnosed with depression due to family separation.

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 acknowledges that [REDACTED] will have some emotional hardship as a result of separation from his wife, his recent diagnosis of diabetes and gastritis, and his concern about his wife's safety. However, in view of the fact that he is employed, the record does not demonstrate that he is unable to function independently and will need “home assistance for the following months/years.” Although [REDACTED] is concerned about his wife's safety in Mexico, he has provided no documentation corroborating that his wife is in jeopardy where she lives. Lastly, [REDACTED] has not fully explained or provided documentation, other than the administrator's letter, to show how his emotional hardship “is unusual or beyond that which is normally to be expected” from an applicant's bar to admission.

In considering all of the hardship factors presented in the aggregate, which factors are the depression [REDACTED] feels due to separation from his wife, his concern about her safety, his health problems, and the financial hardship he has in supporting his wife, the AAO finds that the combination of factors demonstrate that although [REDACTED] will have some hardship if he remains in the United States without his wife, his hardship has not been shown to be extreme. Even though the record shows [REDACTED] as having health problems, his ability to function independently is shown by his working part time. Although he claims to have financial problems supporting his wife, he has presented no evidence of his income and expenses, and his wife has not explained why she receives no financial assistance from her sons and daughter. Although the administrator states that [REDACTED] has been diagnosed with depression, there is no detailed information given about his depression and how it has affected him. Lastly, [REDACTED] has not fully demonstrated how his emotional hardship as a result of separation from his wife is unusual or beyond that which is normally to be expected from an applicant's bar to admission. When the combination of hardship factors is considered in the aggregate, they fail to establish extreme hardship to [REDACTED] if he remained in the United States without his wife.

[REDACTED] declares that relocation to Mexico is not an option because he has lived in the United States for half of his life, because he has a job and owns a house here, and because he is concerned that he will not find a decent job with good wages in Mexico due to his age (66 years old). Although the AAO acknowledges [REDACTED] concerns about relocation to Mexico, we find that he has submitted no documentation of his income and assets, such as his income tax records, savings and retirement accounts, and the valuation of his house. In the absence of such documentation, the AAO cannot determine whether he would be required to work in Mexico in order to support himself. Furthermore, although [REDACTED] has lived half of his life in the United States, his adjustment to living in Mexico will be made easier because he has lived there before.

The factors presented in this case, which are [REDACTED] age, his ties to the United States, his ability to obtain employment in Mexico, his health, and his safety in Mexico, when combined and considered collectively, fail to show that [REDACTED] would endure extreme hardship as a result of living in Mexico with his wife. [REDACTED] has presented no documentation of his income and assets, which evidence is needed to show that he must work in order to support himself in Mexico. He has not addressed where he will live in Mexico and shown that the location will be unsafe. Although he has health problems, he has presented no documentation to show that medical care for those problems is unavailable in Mexico. Thus, the applicant has not established that the combination of hardship factors demonstrate that her husband would experience extreme hardship if he joined her to live in Mexico.

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.