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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



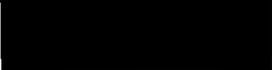
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FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

MAR 25 2010

(CDJ 2004 837 368)

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 United States citizen and claims 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 January 5, 2007.

On appeal, the applicant's spouse states that he is suffering emotionally due to the exclusion of the applicant and that his son is suffering health problems as a result of residing in Mexico with the applicant.

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 August 2001 and remained until she departed voluntarily in January 2006. Accordingly, the applicant accrued unlawful presence from December 26, 2001, the date of her 18th birthday, until her January 2006 departure. As the applicant 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 her 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 the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, statements from the applicant’s spouse; an employment letter and pay stub for the applicant’s spouse; a copy of the applicant’s spouse’s birth certificate; and a copy of the applicant’s marriage certificate.

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

The applicant’s spouse has submitted two statements. He states that he is suffering emotionally due to the absence of the applicant, and that this has affected his ability to concentrate and focus at work. He also states that his son has health problems as a result of residing in Mexico with the applicant,

that he feels disconnected from his son due to their separation, that his son is exhibiting violent behavior, and that he wants his son to reside in the United States in order to learn English. The applicant's spouse further states that, although he feels guilty about not raising his son, he is unable to do so by himself. The applicant's spouse asserts that the applicant who is pregnant with their second child is depressed and lonely, and that he feels the separation is affecting her care of their son, as well as their marriage. The applicant's spouse also states that he is suffering financially from the costs of traveling to Mexico to see the applicant and his son, and from not being able to hold a steady job because of this travel.

Although the AAO acknowledges the applicant's spouse's claims of hardship, it does not find the record to support them. An examination of the record reveals no documentary evidence that establishes that the applicant's spouse is experiencing emotional or financial hardship in the applicant's absence. The record also fails to document that the applicant is depressed or that their son has any health or emotional problems. It further lacks proof of how any hardships being experienced by the applicant's spouse's family are affecting him, the only qualifying relative. The AAO also notes that the record does not contain proof that the applicant and her spouse have a son. In the absence of documentary evidence, the applicant's spouse's statement is insufficient proof of hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the record does not establish that the applicant's spouse would experience extreme hardship if the applicant is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Neither counsel nor the applicant asserts any impacts on the applicant's spouse if he were to relocate with the applicant. As such, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if he were to join the applicant in Mexico.

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 husband would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of her inadmissibility. The record, however, fails to distinguish his hardship from that normally 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.