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FILE:



(CDJ 2005 834 284)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

MAR 25 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:

SELF-REPRESENTED

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 daughter. 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 February 16, 2007.

On appeal, the applicant's spouse asserts that he is experiencing extreme hardship due to the applicant's exclusion.

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 June 2001 and remained until she departed voluntarily in March 2006. Accordingly, the applicant accrued unlawful presence from July 21, 2001, the date of her 18<sup>th</sup> birthday, until her March 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 daughter 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 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 undated statement from [REDACTED] regarding the applicant’s spouse’s health; a statement from [REDACTED] concerning the applicant’s daughter; and a copy of the applicant’s spouse’s naturalization certificate.

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

The applicant’s spouse asserts that his daughter has eczema and needs to remain in the United States to avoid infection. The applicant’s spouse also reports that his daughter has relocated with the

applicant to Mexico and has been ill with a virus and diarrhea due to the water conditions in Mexico. He also asserts that he loves and misses the applicant, and that her exclusion has caused him to have disruptions in his sleep, anxiety attacks and an inability to focus at work, and that he has been prescribed medication to treat his conditions. He further states that he has had numerous absences from work due to his trips to Mexico, and that he has been warned that his work performance must improve or he will lose his job.

An examination of the record reveals that there is insufficient documentary evidence to support the applicant's spouse's assertions concerning the impact of the applicant's removal on his health. A brief statement from [REDACTED] indicates that the applicant's spouse has complained of increased anxiety and decreased sleep and that he feels that his sleep disruptions have worsened. [REDACTED] states that the applicant's spouse is being treated for his sleep problems and that he has displayed several depressive signs and symptoms for which treatment is being considered. She does not, however, offer any medical diagnoses in support of the applicant's spouse's claims, specify what treatment he is receiving or what treatment is being completed. Accordingly, the AAO finds the letter from [REDACTED] to be insufficiently probative of the applicant's spouse's assertions regarding his medical conditions, and will not give it significant weight in evaluating the evidence of record.

The record also fails to establish that the applicant's spouse will suffer hardship as a result of the risks to his daughter's health in Mexico. Although hardship to an applicant's child is not directly relevant to a determination of extreme hardship, the AAO will consider it to the extent that it affects a qualifying relative. In this case, however, the record fails to demonstrate that the applicant's daughter has any medical conditions that would place her at risk in Mexico or that she has been ill as a result of living in Mexico. The record contains a statement from [REDACTED], the United States doctor who has cared for the applicant's daughter since birth. [REDACTED] does not indicate that the applicant's daughter suffers from eczema or any other skin condition. The record also contains no statements or records from health care professionals in Mexico demonstrating the medical problems experienced by the applicant's daughter since she moved to Mexico. 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)).

The record does not contain documentation to establish the applicant's spouse's employment or that he is experiencing any problems at work due to his trips to Mexico to visit his family. It further offers no proof that the applicant's spouse is supporting his wife and daughter in Mexico or that he has depleted his savings in order to pay his financial obligations. In the absence of such documentation, the applicant's statements are insufficient proof of these hardships. *Id.* Accordingly, the AAO does not find the applicant to have established that her spouse would experience extreme hardship if her waiver application is denied 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. The applicant has not articulated any impacts on her spouse if he were to move to Mexico

with her. As such, the record does not indicate 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 would experience hardship as a result of the applicant's inadmissibility. The record, however, fails to 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.