



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-A-V-P-

DATE: FEB. 27, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a citizen and current resident of Mexico, has applied for an immigrant visa. A foreign national seeking to be admitted to the United States as an immigrant must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or relatives.

The Director of the Nebraska Service Center denied the waiver, concluding the record did not establish the Applicant’s U.S. citizen spouse, his only qualifying relative, will experience extreme hardship as a result of his admission being denied. In a subsequent appeal, we affirmed this finding.

On motion to reconsider, the Applicant submits new evidence of hardship and in an updated statement, his spouse indicates she intends to relocate with her 19 year old son if the Applicant remains inadmissible. She claims she will experience extreme hardship as a result.

Upon review, we will deny the motion to reconsider.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue is whether the Applicant has met the requirements of a motion to reconsider. We find she has not.

On appeal, the record included: statements from the Applicant, his spouse, his stepchildren, relatives, and community members; property records; birth, marriage, and death certificates; identity documents; medical records; and employment, tax, and financial records.

The Applicant did not indicate on appeal whether his spouse intended to relocate to Mexico with him or separate from him in the event his admission continued to be denied. We found the Applicant had not established his spouse would experience extreme hardship as a result of separation and, consequently, stated it was not necessary to make a determination as to whether she would experience extreme hardship upon relocation. Our decision was based on a determination that the evidence presented was insufficient to find the spouse required specialized care or daily assistance due to her medical conditions, as an emergency room report describing her as a low risk patient. Likewise, a letter from a physician in Mexico did not specify whether her anxiety rose to the level of a diagnosed psychological condition or required treatment. In addition, the spouse did not describe her conditions with specificity or detail. Furthermore, the Applicant provided evidence of his spouse earning enough income to support herself without outside help.

On motion, the Applicant submits the following hardship evidence: an updated statement from his spouse, asserting that she intends to relocate with her son to reside in Mexico if the Applicant continues to be denied admission; updated medical evidence; and country conditions information. Because the spouse now claims her intention is to relocate, the Applicant must show she will experience extreme hardship as a result of relocation to Mexico.

The spouse explains how their income has decreased since the Applicant moved to Mexico and she believes their financial situation will worsen if she also relocates. The Applicant's spouse describes how while living in the United States her husband remodeled houses and how she works in health care services for the elderly. She states with their income, they were able to buy a home and pay off their mortgage. She claims the Applicant's income went from approximately \$2,000 per month while working in the United States to about \$13 per day selling water and sodas in [REDACTED] Mexico. She contends she does not believe she will be able to find a job in the health care industry in Mexico and will most likely have to take a job earning minimum wage, which is approximately \$4.70 per day. Currently, she explains how the Applicant is living with his parents. The spouse also describes how she divides her time between work, household needs, taking care of her son, and traveling to see the Applicant. The spouse again provides she is struggling with anxiety and stress given the family's situation and fears for their safety while in Mexico because of the current level of violence in the area.

The updated medical evidence submitted on motion includes letters from his spouse's primary care physician and a pediatric psychologist, both located in Mexico. The primary care physician states the spouse frequently visits his medical office for anxiety which has increased due to financial and safety concerns. He concludes that her ability to function normally has been impeded by this stress. A psychologist, specializing in pediatric care, also indicates the spouse has been coming to her office for treatment for anxiety for the past year, which has increased due to financial and safety concerns.

With respect to country conditions, the Applicant submits various articles and reports concerning health care, employment, and education in Mexico, as well as crime in [REDACTED].

We find the Applicant has not established his spouse will suffer extreme hardship as a result of relocation. The record does not provide evidence that the Applicant has tried to find work in his field of home remodeling, what his current income is, that his spouse would be unable to find work in health care; or that she, given the proximity to Mexico of their U.S. residence, would not be able to live in Mexico and keep her current employment in the United States. Moreover, documents in the record show the Applicant and his spouse own a home in the United States, which they state they have paid off and no longer owe a mortgage on. However, the Applicant does not indicate why they would be unable to access the equity in their home or sell the home to alleviate their financial situation upon relocation.

Furthermore, although the spouse has provided documentation to show she seeks medical advice regarding her anxiety, she still has not shown what treatments, if any, have been prescribed; if these treatments have helped alleviate her symptoms; and/or how her condition rises to the level of extreme hardship. In addition, her psychologist is a pediatric psychologist and it is not clear why she would be treating the spouse, whose is an adult.

Finally, we recognize the spouse has safety concerns regarding relocation to [REDACTED] and that the current U.S Travel Advisory recommends U.S. citizens due not travel to the area because of crime and violence. However, the spouse's fears have not prevented her from travelling to the area to visit or even seeking medical advice from two doctors located there. Moreover, given the Applicant's and spouse's work experience and assets in the United States they have not shown they would be unable to relocate to another area in Mexico. Thus, we cannot find the Applicant has established extreme hardship to his spouse in the event of relocation and, as a result, he has not shown he qualifies for a discretionary waiver. Accordingly, the waiver application remains denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of J-A-V-P-*, ID#1886833 (AAO Feb. 27, 2019)