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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PHOENIX, AZ

Date:

NOV 30 2007

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Phoenix, Arizona. 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 who was found to be inadmissible to the United States pursuant to 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Acting District Director*, dated October 31, 2005.

On appeal, counsel asserts that the acting district director wrongfully concluded that the record did not establish that the applicant's spouse would suffer extreme hardship. *Form I-290B*, dated November 29, 2005. Counsel states that the acting district director misinterpreted current law regarding the definition of extreme hardship. She asserts that the acting district director cited to *Matter of Cervantes-Gonzales*, but did not consider *Matter of Kao & Lin*. She also states that the acting district director misapplied the law when he cited *Carnalla Munoz v. INS* and *Matter of Tijam* and when he found that the applicant's family and properties were after-acquired equities. *Id.*

The AAO notes that the acting director does not cite to *Carnalla Munoz v. INS* or *Matter of Tijam* in his decision. In addition, the acting district director did not address the issue of after-acquired entities as the applicant was found to be statutorily ineligible for relief. Furthermore, in *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. *Matter of Kao* will only be considered in a section 212(a)(9)(B)(v) waiver application where a connection has been made between the hardships suffered by an applicant's children and those experienced by the applicant's spouse and/or parent.

Counsel indicates on the Form I-290B that she will submit a brief and/or evidence to the AAO within 30 days. The AAO notes that on August 2, 2007 a facsimile request was sent to counsel regarding the submission of further evidence. As of the present time, no response has been received. Therefore, the record is considered complete. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant lawfully entered the United States on April 5, 1995, by presenting an Employment Authorization Card, Form I-688A, issued to the applicant based on an application for legalization. The applicant's legalization application was denied on August 5, 1991 and he then appealed to the AAO. The AAO dismissed the appeal on May 26, 1995. On September 20, 1995 the Form I-130, Petition for Alien Relative filed on behalf of the applicant by his spouse was approved. On May 28, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On July 14, 1998 and August 17, 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States on August 21, 1998 and November 10, 1999.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. See Memorandum by [REDACTED] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until May 28, 1998, the date of his proper filing of the Form I-485. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the alien experiences or his children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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. The BIA has held:

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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. The applicant states that if the family relocates to Mexico he would not be able to provide them with the life that they have in the United States. *Applicant’s Statement*, undated. He states that he will not have a home, a job, or any profession that would allow him to raise enough money for them to survive. He states that they will suffer emotionally from this change in lifestyle. In addition, the applicant expresses concern for his children’s schooling. He states that they cannot read or write in Spanish and that attending school in Mexico, where there are no special programs for children who do not speak the language, will be terrible for his daughters. *Id.* The AAO notes that the record indicates that the applicant has been working as a baker since 1988. *Statement from Employer*, dated June 17, 2002. The applicant failed to submit supporting documentation regarding the country conditions in Mexico, his inability to find employment in Mexico as a skilled worker and the educational system in Mexico. Going on record without supporting documentary evidence is not sufficient for the 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 second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant states that if he were separated from his spouse, she would not be able to manage all the costs that are necessary to maintain their home and personal expenses. *Applicant's Statement*, undated. The record also includes a letter from the applicant's spouse's doctor, [REDACTED] which was submitted with the initial waiver application. [REDACTED] states that the applicant's spouse is currently under her care for depression and that she has been treating her for this condition for the past two years. *Letter from* [REDACTED] undated. She states that her condition has been steadily improving and that she needs the support of her spouse and family to continue to improve. *Id.* The AAO notes that this letter lacks significant probative value as it does not indicate the history of the doctor-patient relationship, the reasons why the applicant's spouse sought treatment, the severity of the applicant's problems, what kind of treatment she is receiving for her condition and how her condition effects her daily activities. The applicant also submitted fifteen affidavits from neighbors, family friends, and co-workers attesting to the emotional and economic hardship his family will face as a result of separation. Again, these statements also lack probative value as they do not address the details of the applicant's spouse's hardship.

In support of the applicant's claim of hardship, counsel submits evaluations from [REDACTED] the Educational Services Director of Creighton Elementary District and [REDACTED] a child and family therapist. [REDACTED] finds that the applicant's daughters would face educational, emotional and physical hardship as a result of the applicant's inadmissibility. *Emotional and Academic Evaluation*, dated June 11, 2002. She states that the applicant's children do not speak or write Spanish and would be subjected to substandard education in Mexico, causing irreversible damage to their self-esteem, academic progress and future careers. She explains that the applicant and his spouse would not be able to support their children's educational needs in Mexico because their employment would only cover their minimal living expenses. Citing a statistic from Mexico's Secretary of Education, [REDACTED] states that 72 percent of school children in Mexico do not graduate from high school. She also states that the emotional hardship of being separated from their father would affect the children's ability to learn. She states that both daughters are exhibiting signs of depression and anxiety at the possibility of the applicant being removed from the United States. *Id.*

[REDACTED] states that the applicant's spouse reports that she has become extremely depressed, fatigued, and has been put on medication for these symptoms by her doctor. *Id.* [REDACTED] also states that the applicant's spouse has not worked outside the home for 12 years and before that she worked at a laundromat for minimum wage. She asserts that the applicant's spouse relies on the applicant for emotional and economic support. In regards to the applicant's ability to support his family in Mexico, [REDACTED] states that the applicant is from a small town in Chihuahua, Mexico and that there is no available employment, except in nearby factories with an average salary of \$50.00 per week. *Id.* However, as previously noted, the record does not establish that the applicant would be unable to find employment in Mexico nor does it establish Ms. Sanchez as an expert on country conditions in Mexico.

For her evaluation [REDACTED] relies on the information provided by [REDACTED] and finds that the family has been traumatized by the potential removal of the applicant and that the trauma they are experiencing has resulted in the family losing trust in people and the environment. *Psychological Evaluation*, dated June 13, 2002. [REDACTED] further concludes that if the family were to relocate to Mexico a permanent negative change would be created. *Id.* Although the AAO acknowledges the expertise of [REDACTED] in their respective fields, it finds neither evaluation to reflect the insight and detailed analysis that would be of value

to a determination of extreme hardship as it relates to the applicant's spouse. [REDACTED] not a health care professional or an expert on country conditions in Mexico. Accordingly, her conclusions regarding the impact of separation or relocation on the applicant's family have little evidentiary weight. [REDACTED] evaluation is of diminished value as it is not based on direct observation of the applicant's family, but on information provided in [REDACTED] report. Moreover, both evaluations focus on the effect of the applicant's inadmissibility on his children and do not discuss how the hardships they would experience would affect their mother, the only qualifying relative in this case.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the current record does not establish that this hardship rises to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, [REDACTED] 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely 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.