

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

[REDACTED]

FILE:

[REDACTED]

CDJ2004 799 862

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: MAR 24 2008

IN RE:

[REDACTED]

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, Mexico denied the waiver application. 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 ten years of his last departure from the United States. The applicant is married to a United States citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated July 7, 2006.

On appeal, counsel asserts that the applicant has demonstrated that his qualifying relative would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B; Attorney's Brief*.

In support of this assertion, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; medical records for the applicant's spouse; medical prescriptions for the applicant's spouse; medical records for the father of the applicant's spouse; a psychological evaluation of the applicant's spouse; letters from credit card companies; bank statements for the applicant's spouse; a stolen car police report; medical bills for the applicant's spouse; utility bills for the applicant's spouse; copies of airline ticket, receipts and boarding passes; copies of used calling cards; tax statements for the applicant and his spouse; W-2 Forms for the applicant and his spouse; tuition bills for the applicant's spouse; and a statement from the parents of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant entered the United States without inspection in July 2002 and remained until his departure in April 2005. *Immigrant Visa notes, American Consulate General*, dated October 26, 2005; *Form I-601, Application for Waiver of Excludability; Form G-325A, Biographic Information sheet, for the applicant*. The applicant accrued unlawful presence from July 2002 until April 2005. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his July 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *See U.S. birth certificate*. The record does not address what family members, if any, the applicant's spouse may have in Mexico. In August 1996, she began to study at the University of Puebla in Mexico. *Statement from the applicant's*

spouse, dated August 31, 2006. The applicant's spouse studied chemical engineering and conducted professional practices for the company PEMEX. *Id.* In April 2002, she returned to the United States, as she could not find a job in her area of studies. *Id.* The applicant's spouse indicates that she has periodically returned to Mexico to visit her husband, but that she is unable to stay for long periods of time because she makes more money in the United States. *Id.* She notes that she has been fired and lost many jobs due to her trips to Mexico. *Id.* The applicant lost his job in Mexico and is having trouble finding another one. *Id.* As a result, the applicant's spouse sends money to the applicant. *Id.* While the AAO acknowledges the statements of the applicant's spouse, it notes that there is nothing in the record, such as letters from the applicant's former employer and published country condition reports detailing the employment situation in Mexico, to support her assertions regarding his employment situation. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Furthermore, the AAO notes that the applicant and his spouse hold Mexican university degrees in chemical engineering. *Psychological Report*, [REDACTED] *Avalon Counseling Associates*, dated August 31, 2006. There is no documentary evidence in the record that demonstrates that they would be unable to contribute to their family's financial well-being from Mexico. While the AAO observes that the father of the applicant's spouse lives in the United States and has suffered from kidney and back ailments and higher than normal levels of cholesterol (*See medical records for the father of the applicant's spouse*, [REDACTED] *Medical Center*, dated August 24, 2006; *Steinberg Diagnostic Medical Imaging Centers*, dated August 25, 2006; and *Quest Diagnostics*, dated August 27, 2006), the record fails to indicate that her father's medical conditions impair his ability to perform his daily activities or that the applicant's spouse has any responsibility for the care of her father. The applicant's spouse suffered a miscarriage and as a result, needed a gynecological surgical procedure on June 24, 2005. *Statement from* [REDACTED], dated June 24, 2005. She was allowed to return to work on June 30, 2005. *Id.* In July 2005, she had a follow-up visit with her physician who found her to have a normal examination. *Statement from* [REDACTED], dated July 12, 2005. The applicant's spouse was scheduled to return to her physician nearly one year later for an annual examination. *Id.* There is nothing in the record to demonstrate that the applicant's spouse has had medical problems related to her miscarriage or surgery. The applicant's spouse claims to have urinary tract infections (*See statement from the applicant's spouse*, dated August 31, 2006), but there is no evidence in the record to establish that he would be unable to receive adequate treatment in Mexico. The applicant's spouse mentions that her parents and sister received death threats in Mexico by unknown individuals. *Statement from the applicant's spouse*, dated August 31, 2006; *Declaration from the parents of the applicant's spouse*, dated September 5, 2006. The AAO notes that the record is unclear as to the reason her family is being threatened and there is no mention of the applicant's spouse being at risk. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The parents and siblings of the applicant's spouse reside in the United States. *Statement from the applicant's spouse*, dated August 31, 2006. The applicant's spouse claims that she constantly feels sick and her physical health has declined because of the applicant's absence. *Statement from the applicant's spouse*, dated August 31, 2006. The AAO notes that there is no evidence in the record that connects the physical problems of the applicant's spouse to her separation from the applicant. The applicant's spouse has suffered significant sadness and depression because of her separation from the applicant.

Psychological Report, Avalon Counseling Associates, dated August 31, 2006. She has been diagnosed with clinical depression and has been prescribed Zoloft to give her some emotional relief. *Id.*; See also *medical prescriptions for the applicant's spouse*. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letters are based on one interview. Accordingly, the conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. The AAO notes that although the applicant's spouse states that she has been seeing a psychologist since the applicant's visa was denied, the record offers no evidence to document this relationship.

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, *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. *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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not establish that his situation, if he remains in the United States, is different from that of other individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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.