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FILE:

Office: CIUDAD JUAREZ, MEXICO

Date:

(CDJ 2004 634 257 RELATES)

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 Officer in Charge, Ciudad Juarez, 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 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. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge 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 Officer in Charge*, dated September 20, 2005.

On appeal, counsel asserts that the applicant has demonstrated that his qualifying relative would suffer extreme hardship if the applicant's waiver request is denied. *Form I-290B*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from [REDACTED], Medical Assistant, The Nevada Center for Reproductive Medicine, Inc., dated August 9, 2005; and several statements from 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.

In the present application, the record indicates that the applicant entered the United States without inspection in August 1997 and remained until February 2005. *Form I-601; See Also Refusal Worksheet.* The applicant accrued unlawful presence from August 1997 until February 2005. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his February 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 the applicant 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's waiver request is denied. 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 a qualifying relative of the applicant 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 Mexico. *See Naturalization Certificate of the applicant's spouse.* Most of the applicant's family members live in Mexico. *Statement from the applicant's spouse*, dated March 11, 2005. The applicant's spouse states that her mother, father, and sibling live in the United States. *Statement from the applicant's spouse, undated.* The record states that the applicant's spouse has a history of tubal occlusion, endocrine disorder and pelvic adhesions. *Letter from [REDACTED] Medical Assistant, The Nevada Center for Reproductive Medicine, Inc.*, dated August 9, 2005. She underwent infertility treatment in October and November 2003 and suffered a miscarriage during her last treatment. *Id.* She was recommended to have additional treatment consisting of thrombophilic and antiphospholipid antibody panel testing. *Id.* While the AAO acknowledges the health issues raised by the record, it notes that the letter from the Nevada Center for Reproductive Medicine, Inc. is written by a medical assistant, not by the doctor responsible for the care and treatment of the applicant's spouse. As a result, the

letter is of little evidentiary value in determining extreme hardship. Furthermore, the applicant has submitted no evidence to demonstrate that the applicant's spouse is currently receiving treatment and whether she would be able to receive adequate treatment in Mexico. The record does not mention the financial effect upon the applicant and his spouse if they were to live in Mexico, and there is nothing in the record to demonstrate that the applicant and his spouse would be unable to financially support themselves from Mexico. Counsel states that the applicant's spouse would suffer economic hardship that could eventually have a broader effect on the community as a whole. *Attorney's brief*. The AAO acknowledges the assertions made by counsel, however, it notes that the record fails to include documentary evidence to explain or support such assertions. *See Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without supporting documentary evidence, the assertions of counsel will not meet the petitioner's burden of proof of this proceeding. The assertions of counsel do not constitute evidence. *Id.* When looking at the aforementioned factors, the AAO does not find that the applicant has 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 applicant's spouse stated that she and the applicant are trying to have children and it would be very hard to achieve this if he is in Mexico. *Statement from the applicant's spouse*, dated March 11, 2005. The AAO observes that the applicant's spouse is originally from Mexico (*Form G-325A*), and there is nothing in the record to demonstrate that the applicant's spouse is unable to visit or reside in Mexico with the applicant. If the applicant and his spouse are able to have a child, the applicant's spouse is concerned that the applicant will not be able to see their child grow. *Id.* While the AAO acknowledges this concern, it notes that currently the applicant and his spouse do not have any children and a child is not a qualifying relative in this particular case.

Counsel states that separation from family alone constitutes extreme hardship to the applicant's spouse. *Attorney's brief*. The applicant's spouse stated that she needs the applicant in her everyday life. *Statement from the applicant's spouse*, dated February 16, 2005. Her family does not live close to her, and the applicant was the only one that she could count on for conversation. *Statement from the applicant's spouse*, dated March 11, 2005.

While the AAO acknowledges these difficulties, 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 fails to prove that her situation, if she remains in the United States, is different from that of other individuals separated as a result of removal or inadmissibility. Therefore, it does not rise to the level of extreme hardship. When looking at the aforementioned factors, the

AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.