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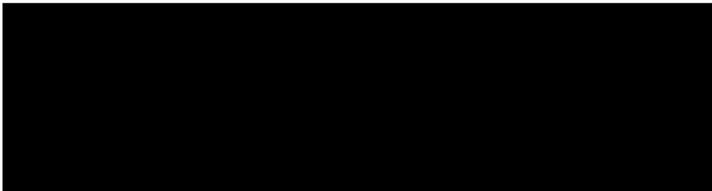
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IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

The director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated November 29, 2005.

On appeal, counsel asserts that the Service erred in denying the applicant's waiver application because it failed to consider the extreme circumstances present. Counsel states that the district director cites "unbinding" case law from the 5th and 7th Circuit Courts and that she incorrectly stated that the applicant's spouse had not submitted a hardship statement. *Counsel's Brief*, January 21, 2006.

The AAO notes that all United States Circuit Court decisions not arising in the jurisdiction of the applicant's case are not binding on the AAO, but may be used as a persuasive authority. Thus, the district director did not err in citing cases from the 5th and 7th Circuit Courts, but must also consider all 9th Circuit Court cases.

In the present application, the record indicates that the applicant entered the United States without inspection in 1986. In January 2000, the applicant voluntarily departed the United States. Therefore, The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until January 2000, when he voluntarily departed the United States. In applying for permanent residence, the applicant is seeking admission within 10 years of his January 2000 departure from the United States. 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 or parent of the applicant. Hardship the alien himself experiences or his child experiences 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. Counsel states that the applicant's spouse will suffer extreme hardship if the applicant is removed from the United States. Counsel states that the applicant's spouse has lived her entire life in the United States; the applicant's spouse's entire family and the applicant's entire family live in California; the applicant's parents depend on the applicant to assist them with everyday matters; and the economic situation in Mexico would mean that the applicant and his spouse would not be able to find employment. *Counsel's Brief*, dated January 21, 2006. Counsel also states that the applicant's spouse speaks Spanish, but would be viewed as an outsider if she relocated to Mexico. *Id.* The applicant's spouse states that she and the applicant have been married for over four years and relocating to Mexico would mean that she would have to leave her entire family and the applicant's family. *Spouse's Statement*, undated. She also states that she and the applicant have established cultural ties with the United States pointing to their church attendance and the applicant's Sunday baseball games. *Id.* In support of these assertions, counsel submitted copies of the applicant's and his spouse's families' lawful permanent resident cards and naturalization certificates. However, no country conditions documentation was submitted to establish that the applicant and/or his spouse would not be able to find employment in Mexico. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). The AAO notes that relocation to a foreign country generally involves inherent difficulties such as adapting to cultural norms, and finding new employment and housing. In the present case, the AAO does not find the record to demonstrate that the applicant's spouse would suffer hardships different or greater than those normally encountered upon relocation to a foreign country. Accordingly, the applicant has not established that his spouse would suffer extreme hardship if she were to reside in Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse will suffer emotionally from being separated from the applicant. *Counsel's Brief*, dated January 21, 2006. The applicant's spouse states that if her spouse is returned to Mexico she will feel frustrated, nervous, depressed and sad. She states that because she is a stay at home mother with no work experience she will not be able to support herself and her daughter on her own. *Spouse's Statement*, undated. In support of the emotional hardship that the applicant's spouse will suffer, counsel submitted a psychological assessment from [REDACTED] a. Dr. [REDACTED] found that the applicant was suffering from Major Depressive Disorder as a result of the applicant's possible removal. She recommends that the applicant's spouse consider a psychiatric evaluation, individual psychotherapy and group therapy. *Psychological Assessment*, undated. No evidence of further treatment was submitted. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on one interview of the applicant's spouse. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the disorder suffered by the applicant's spouse. Therefore, the conclusions reached in the submitted report do not reflect

the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the report's value in determining extreme hardship. In addition to emotional suffering, the applicant's spouse states that she will also suffer financial hardship as a result of the applicant's removal. In support of this assertion, counsel submitted financial documentation showing the family's rental agreement, a bank statement, a Costco membership bill and a 2004 federal income tax return showing an income of \$23,720. The AAO finds that this documentation fails to provide a complete picture of the applicant's family's finances. In addition, although the applicant's spouse is not currently working, the record indicates that she completed courses at the American Career College to become a dental assistant and that in 2001 she was employed by a dental practice. *Spouse's Statement*, undated; *Psychological Assessment*, undated; *Spouse's W-2*, dated 2001. The record does not demonstrate that the applicant's spouse would be unable to find work as a dental assistant and, thereby, support her family. Thus, the AAO concludes that the applicant has not established that his spouse will suffer extreme hardship as a result his removal from the United States.

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 distinguish her situation from that of other individuals separated as a result of removal and, therefore, establish that she would suffer extreme hardship.

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 an 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.