



U.S. Citizenship
and Immigration
Services

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DEC 02 2009

[REDACTED]

FILE:

(CDJ 2004 760 170)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 under section 212(a)(9)(B)(i)(II) of 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. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their three children.¹

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 December 13, 2006.

On appeal, counsel contends that the applicant's qualifying relative would suffer extreme hardship and United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application. *Form I-290B, Notice of Appeals to the Administrative Appeals Office (AAO)*.

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a school record for the applicant's spouse's older daughter; statements from the applicant's spouse; and a statement from the applicant's spouse's older daughter. 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.

¹ The AAO notes that the record, with the exception of a September 27, 2007 letter from the secretary at the school attended by the applicant's spouse's older daughter, does not contain documentary proof that the applicant and his spouse have three United States citizen children.

(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 case, the record indicates that the applicant entered the United States without inspection in March 1998 and departed in December 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico, dated December 13, 2005.* The applicant, therefore, accrued unlawful presence from June 23, 1998, the date of his 18th birthday, until he departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 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 a violation of section 212(a)(9)(B)(i)(II) of the Act are 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 or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. 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 whether she resides in Mexico or the United States, as she is not required to reside outside 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 joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address what familial or cultural ties the applicant's spouse may have to Mexico. The applicant's spouse notes that she and her family are not accustomed to the way of life in Mexico and it would be difficult for them. *Statement from the applicant's spouse*, dated December 20, 2005. While the AAO acknowledges this assertion, it notes that the record makes no mention of how the applicant's spouse's Spanish language abilities, or her lack thereof, would affect her adjustment to Mexico. The applicant's spouse fails to specify why she and her family would have a difficult time adjusting to life in Mexico. Furthermore, the record does not include documentation, such as published country conditions reports, regarding the cost of living in Mexico, the economy, as well as employment opportunities. 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)). The applicant's spouse notes that her younger daughter became sick in Mexico due to the change in food. *Statement from the applicant's spouse*, dated December 20, 2005. While the AAO acknowledges this statement, it notes that the applicant's child is not a qualifying relative for the purposes of this case and the record fails to document how any hardship the applicant's child would encounter would affect her mother, the only qualifying relative in this case. When looking at the record before it, 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. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. She notes that the applicant is the provider for the family and that, without his employment, their insurance would be cancelled. *Statement from the applicant's spouse*, dated December 20, 2005. She notes that she would be forced to move out of their home and live with her mother due to the fact that she would not have an income to pay the bills and the grocery expenses. *Id.* She also asserts that she is asthmatic and would be forced to ask for welfare to enable her to take her medication. *Id.* While the AAO acknowledges these assertions, it notes that the record does not include any documentation, such as rent/mortgage statements, credit card statements, or bills for household expenses for the applicant and his family to establish the applicant's spouse's financial status. The record also fails to include documentation from a licensed healthcare professional regarding the health problems of the applicant's spouse and the cost of her medication. As previously noted, 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, there is nothing in the record to show that the applicant would be unable to obtain employment and contribute to his family's financial well-being from a location other than the United States.

The applicant's spouse also asserts that her older daughter has been held back in school because she has spent so much time visiting her father in Mexico and that leaving their father after their visiting is hard on all her children. While the AAO acknowledges these statements, it again notes that the

The applicant's spouse notes that she could not imagine being without the applicant. *Statement from the applicant's spouse*, dated December 20, 2005. She notes that she sometimes finds herself crying because she misses him and does not have anyone to support her. *Statement from the applicant's spouse*, undated. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would 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.

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.