U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] (CDJ 1997 698 024) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: NOV 27 2009

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:

SELF-REPRESENTED

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 her last departure from the United States. The applicant is married to a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their United States citizen child.[1]

The District Director found that, based on the evidence in the record, the applicant had failed to establish that the bar to her admission would result in extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated September 14, 2006.

On appeal, the applicant contends that her spouse would suffer extreme hardship if her waiver application were to be denied. *Form I-290B.*

The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, that has not been signed by the attorney seeking to represent the applicant. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted. 8 C.F.R. § 103.2(a)(3). Accordingly, the applicant will be considered self-represented.

In support of the waiver application, the record includes, but is not limited to, a psychological evaluation of the applicant's spouse; earnings statements for the applicant's spouse; and a statement summarizing a psychological evaluation of the applicant's child.[2] 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-
> >
> > . . . .

[1] The record indicates that the applicant may have a second child, but only one birth certificate has been submitted.

[2] The AAO notes that the record also contains a statement in Spanish from the applicant's spouse. As this statement is not accompanied by an English-translation, the AAO will not consider it pursuant to the regulation at 8 C.F.R. § 103.2(b)(3).

> (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 case, the record indicates that the applicant entered the United States without inspection in March 1997 and voluntarily departed in November 1998, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 22, 2005. The applicant re-entered the United States with a V visa in 2004. *Id.* The applicant remained in the United States until November 2005 under the V visa. *Form I-601, Application for Waiver of Ground of Excludability*. The applicant accrued unlawful presence from April 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in November 1998. In that she is seeking admission within ten years of her 2005 departure from the United States, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and must seek a waiver under section 212(a)(9)(B)(v) of the Act.

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 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 or her child would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she 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 he resides in Mexico or the United States, as he 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 her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Form I-130, Petition for Alien Relative.* The record does not address how the applicant's spouse would be affected if he resided in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does it document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether he would be able to receive adequate care. A statement in the record from a child psychotherapist in Mexico indicates that the applicant's United States citizen child, who is in Mexico, suffers from anxiety as a result of being separated from his father. *Statement from* [redacted] dated September 28, 2006. The psychotherapist also notes in her statement that the applicant's child is a happy boy and is not materially deprived. *Id.* 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 that the record fails to document how any hardship the applicant's child is encountering affects his father, the only qualifying relative. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Mexico. *Form I-130, Petition for Alien Relative.* The applicant asserts that her spouse's income is too meager to support two households. *Form I-290B.* A psychological evaluation in the record also notes that the applicant's spouse is in a difficult financial situation, as he needs to support the applicant and their child in Mexico. *Statement from* [redacted] *Licensed Psychologist*, undated. While the record includes earning statements for the applicant's spouse, the AAO notes that the record does not include documentation, such as household bills, rent or mortgage statements, credit card bills or outstanding loans, of the applicant's spouse's financial obligations. 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 AAO also notes that the record does not include evidence, e.g., money transfer receipts, that the applicant's spouse is financially supporting the applicant and his United States citizen child in Mexico. The record also fails to document, through published country conditions reports, the economic situation and

employment availability in Mexico. There is nothing in the record to demonstrate that the applicant is unable to obtain employment and thereby reduce the financial burden on her spouse.

A licensed psychologist has diagnosed the applicant's spouse as having Major Depressive Disorder, Single Episode, Severe without Psychotic Features. *Statement from* [redacted] *Licensed Psychologist*, undated. She further indicates that the applicant's spouse informed her that he is having problems sleeping and is experiencing pressure in his chest, severe headaches and gastrointestinal problems. *Id.* His separation from the applicant is also affecting his work, his daily life and his ability to concentrate. *Id.* The psychologist notes that there is epidemiological evidence that the applicant's spouse is at risk of suicide since men in his age group who are separated from their families are one of the higher risk groups. *Id.* While the AAO acknowledges the psychologist's statements, it notes that the record does not include the epidemiological evidence to which she refers. Neither does it find the record to include any medical documentation in connection with the medical problems reported by the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, *supra*. Furthermore, although the input of any mental health professional is respected and valuable, the AAO notes that the conclusions reached in the submitted statement are based on a single interview with the applicant's spouse. In that they are based on only one interview, the AAO finds them to be speculative and of diminished value to a determination of extreme hardship.

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 his separation from the applicant. However, the record fails to distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal or exclusion. 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, individually and in the aggregate, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.