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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

H6

APR 07 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date:
CDJ 1996 706 200

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, 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 (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 ten years of her last departure from the United States. The applicant is the spouse of a U.S. citizen, has a U.S. citizen child, and four lawful permanent resident children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated April 15, 2007, the district director found that the applicant failed to establish extreme hardship to his father as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In an undated Notice of Appeal to the AAO, the applicant's spouse states that he has been living in the United States since 1984, that he and the applicant have eight children with legal status in the United States and 15 grandchildren, and that they do not have any family in Mexico anymore.[1] He also states that the applicant is 54 years old and suffers from gall bladder and neurological problems and high blood pressure. He states that while in the United States these conditions were under control, but in Mexico doctors cannot adequately treat her gastrointestinal and neurological problems.

In the present application, the record indicates that the applicant entered the United States without inspection in September 1993. The applicant remained in the United States until July 2004. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until July 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of her July 2004 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-
> >
> > . . . .

[1] The AAO notes that only five children were listed on the applicant's waiver application. The applicant's petition for an Alien Relative (Form I-130) states that a list of their children is attached, but no list was found in the record.

> (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 AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant and the applicant's children is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes a Notice of Appeal to the AAO, numerous letters and medical documents all in Spanish with no English translation, and a letter from the applicant's spouse's employer. The AAO notes that because the applicant failed to submit certified translations of the documents submitted in Spanish, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The applicant's spouse's employer, [redacted], states in an undated letter that the applicant's spouse has had to take several leave of absences because of his wife's health. He states that the applicant's spouse recently informed him that he would need to take another leave of absence because his wife is having an operation in Mexico. The applicant's spouse's employer states that the applicant's spouse and his two daughters are three of his most valuable employees and are hard to replace.

The AAO acknowledges that the applicant's spouse is suffering hardship as a result of being separated from the applicant. However, in order for a waiver application under section 212(a)(9)(B)(v) of the Act to be granted, the applicant's spouse must detail how the applicant's

medical problems are causing him hardship. The AAO notes that, as stated above, hardship to the applicant can only be considered when it is shown that hardship to the applicant is causing the applicant's qualifying relative to suffer extreme hardship. Thus, the applicant's spouse must detail and document how dealing with the applicant's medical condition in Mexico and not in the United States is affecting him.

Furthermore, the applicant's spouse does not make any statements or claims regarding the hardship he would suffer as a result of relocating to Mexico to be with the applicant. In order for a waiver to be granted the applicant must show that her spouse would suffer extreme hardship as a result of being separated from her and as a result of relocating to Mexico to be with her. The AAO recognizes that the applicant's spouse has lived in the United States for over 25 years, is employed in the United States, and has indicated that he has extensive family ties in the United States. However, the AAO notes that the record does not include documentation to establish the existence of his children and grandchildren and/or if they are living close to the applicant. The record gives conflicting statements as to how many children the applicant's spouse has in the United States and there are no copies of documents showing their status in the United States. Furthermore, the record does not show that the applicant's spouse would not be able to find employment in Mexico or that the applicant is not able to find adequate health care in Mexico for her conditions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 must submit documentation to support any claims of 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 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.