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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 12 2010
CDJ 2006 574 543

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).

Michael Rhew

for 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 and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated May 31, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated June 28, 2007, counsel states that the district director did not evaluate the applicant's case on its individual merits, but instead utilized boilerplate comments in writing his decision.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

In the present application, the record indicates that the applicant entered the United States without inspection in 1996. The applicant remained in the United States until January 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997 the date the unlawful presence provisions were enacted until January 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2006 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.

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 or her 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 brief submitted on appeal, a brief submitted with the initial waiver application, documents indicating that the applicant and his spouse own a home, and documentation regarding the monthly expenses of the applicant's family. The AAO notes that the record includes several documents in the Spanish language with no English translation attached. Because the applicant failed to submit certified translations of these documents, 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.

In the brief submitted on appeal, counsel states again that the district director's decision did not meaningfully consider the factors in the applicant's case. Counsel states that the applicant was continually referred to in the wrong gender, the decision did not even state who the qualifying relative was, and the hardship that would result from separation was not taken into consideration.

In the brief submitted with the initial waiver application, counsel states that the applicant's spouse is experiencing financial, physical, emotional, and mental hardship as a result of being separated from the applicant and his two daughters. Counsel states that the applicant is living in Mexico with her daughters. She also states that the applicant's daughters are suffering from depression and are having problems in school. Counsel states further that the applicant and her spouse were seeking counseling before the applicant was removed in order to deal with the extreme emotional stress his imminent departure was causing. In addition to emotional hardship, counsel states that the applicant's spouse suffers from stomach problems, which have been exacerbated by the stress of his family living in Mexico and has been advised to see a specialist.

She also states that in the event the applicant's spouse requires surgery, he would not be able to relocate to Mexico where his access to medical care would not be the same as it is in the United States. Counsel states that the applicant's spouse is an active member of his local church and has ties to the community in the United States. She states that he cannot relocate to Mexico because there is no financial opportunity there.

Counsel indicates that the applicant and her spouse own a home and have a mortgage in the United States. The AAO notes that their home ownership documents have been included as part of the hardship record. The record does contain two statements from the applicant's daughter stating that they miss their father, their home, and their dog. The applicant's daughter states that they do not feel comfortable in Mexico and they are not performing well in school because they do not speak Spanish.

The AAO also notes that in counsel's brief she references several supporting documents as part of the record, including letters from two physicians, a letter from the applicant's daughter's school, and a letter from the family's pastor in the United States. The AAO again notes that the record contains various documents in the Spanish language with no English translation attached and that without a certified translation these documents cannot be afforded any weight in these proceedings.

Furthermore, as also stated above, hardship to the applicant's children will not be considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that hardship to the applicant's children is causing hardship to the applicant's spouse.

Moreover, the record does not include any supporting documentation concerning the hardships the applicant's spouse would face if he relocated to Mexico to be with his family. 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.