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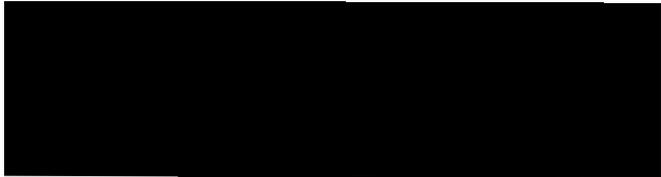
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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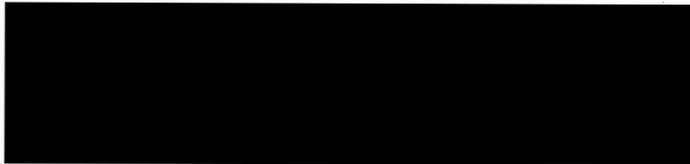
FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: APR 14 2009

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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Cuidad 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 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen daughter. She seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant failed to establish that a qualifying relative would suffer extreme hardship as a result of her continued inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated June 1, 2006.

On appeal, counsel states that the district director's decision was in error because the applicant's spouse and daughter would suffer extreme hardship due to separation. *Form I-290B*, dated June 16, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in November 2001. The applicant remained in the United States until September 2005. Therefore, the applicant accrued unlawful presence from when she entered the United States in November 2001 until September 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her September 2005 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 and/or parent of the applicant. Hardship the applicant or her 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 U.S. citizen or lawfully permanent resident 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 applicant 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.

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). 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 he resides in Mexico and in the event that he resides in the United States, as he 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.

In his brief, counsel states that the applicant and her spouse are currently living apart as the applicant is living in Mexico with the couple's two and a half year old daughter while the applicant's spouse

remains in the United States. *Counsel's Brief*, undated. Counsel states that the applicant's spouse has been supporting the applicant and his daughter financially and that he is having financial problems supporting two households. He states that the applicant's spouse cannot take care of their child because he works long hours and he cannot afford a babysitter. Counsel also states that the applicant's spouse is concerned with the living conditions in Mexico, that his daughter continuously feels sick while she is there, which he believes to be a result of the weather and food. Counsel asserts that the applicant's spouse would have a very hard time finding a job in Mexico that would allow him to provide his family with an education, health care and a hopeful future. Counsel states that the applicant's spouse does not want his child to lose the educational opportunities that she has in the United States. He states that the applicant only has a few relatives in Mexico, it would be impossible for them to help provide support for the applicant, and the political and economic conditions in Mexico are so poor that if the applicant's spouse were forced to live there for ten years, employment and proper housing would be difficult to obtain. *Id.*

In regards to the applicant's spouse remaining in the United States separated from the applicant and his daughter, counsel states that as a result of this separation, the applicant's spouse is currently under medical treatment and supervision. Counsel states that the applicant has been unable to work from April 14, 2006 through June 11, 2006 because of vertigo. *Id.*

In support of the assertions made by counsel the record includes a statement from the applicant's spouse and a letter from a medical clinic in Mexico. In his statement, the applicant's spouse expresses concern over his financial situation because of supporting two households, his ability to care for his daughter in the applicant's absence, his daughter living in Mexico and having health problems as well as being denied the opportunities that she would have if she resided in the United States, and his emotional suffering. *Spouse's Statement*, translated on June 27, 2005. The letter from the medical clinic in Mexico states that during the last six months the applicant's child has suffered from, "Rhinitis and allergic conjunctivitis. Moderate asthmatic crisis and intermittent atopic dermatitis due to a bronchial hyper-activity and allergic hypersensitivity to pollen, weather and the environment of this rural region." *Letter from [REDACTED]*, translated on June 27, 2005. The AAO acknowledges these conditions, but finds that this letter is of diminished probative value in demonstrating hardship because it fails to explain sufficiently how these ailments are affecting the applicant's child's ability to function as a healthy two year old. The letter does not explain whether the applicant's child is receiving treatment for these medical problems and/or whether these conditions can be prevented through treatment, change in behavior, or measures taken by the child's parent.

The record contains no documentation to support the assertions regarding conditions in Mexico nor has there been documentation submitted to support the statements regarding the applicant's spouse not being able to work. 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)). 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).

Thus, the AAO finds that the current record does not establish that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility.

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 notes that in counsel's brief, he states that the applicant is of good moral character. *Counsel's Brief*, undated. In support of this assertion the record includes five letters from friends and members of the community attesting to the applicant's good moral character. However, because 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 the applicant is statutorily ineligible for relief and 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.