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

U.S. Citizenship
and Immigration
Services

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AUG 11 2009

FILE:

[REDACTED]
(CDJ 2005 813 284)

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).

John F. Grissom

Acting 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 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 married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated January 30, 2008.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that she had failed to meet the burden of establishing extreme hardship to her qualifying relative as necessary for a waiver under 212(v) of the Act. *Form I-290B*.

In support of these assertions the record includes, but is not limited to, a statement from the previous counsel of record; statements from the Center for Child and Family Services; a transcript from the television show “Don Francisco Sabado Gigante;” statements from the applicant’s spouse; statements from the applicant’s older child; money remittances; website and media articles about the Advancement Via Individual Determination (AVID) educational program; grade reports and examination scores for the applicant’s older child; achievement certificates for the applicant’s younger child; a statement from the applicant’s pastor; and statements from the applicant’s children’s principals. 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.

(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 January 1995 and voluntarily departed the United States, returning to Mexico in February 2007. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated March 6, 2007. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in February 2007. In applying for an immigrant visa, the applicant is seeking admission within ten years of her February 2007 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 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 children would experience upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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 travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A, Biographic Information, for the applicant.* The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties in Mexico. The record does not address whether the applicant's spouse speaks Spanish and how his language abilities, or lack thereof, would affect his adjustment to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The applicant's spouse notes that his children do not read or write Spanish and that they would suffer in Mexico due to the lack of educational opportunities. *Statement from the applicant's spouse, dated March 1, 2007; See also statement from prior counsel of record, dated April 22, 2007.* Prior counsel asserts that the applicant's children will also lack access to adequate medical care and will have difficulty obtaining treatment for childhood illnesses and accidents. *Statement from prior counsel of record.* While the AAO acknowledges these assertions, it notes that the applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship they might encounter would affect the applicant's spouse, 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 was born in Mexico. *Form G-325A, Biographic Information, for the applicant.* The applicant's spouse has reported that he has been feeling hopeless and at times has considered suicide due to being separated from the applicant. *Statement from [REDACTED] Center for Child and Family Services, undated.* The applicant's spouse reported that at times he feels dizzy, a condition he did not have prior to his separation from the applicant. *Id.* His evaluator concludes that this physical turmoil is clearly related to the extreme emotional pain the applicant's spouse is going through and diagnoses him as having Adjustment Disorder with Depressed Mood and Major Depressive Disorder. *Id.* The evaluator also states that the therapist of the applicant's spouse concluded that his prognosis is poor, as his hope will be shattered if the applicant cannot return to the United States. *Id.* The AAO notes there is no indication that the evaluator who wrote the undated statement in the record is a licensed healthcare professional. The evaluator did not address his own credentials, the number of times he met with the applicant's spouse, nor how he arrived at his diagnosis of the applicant's spouse's mental health. Additionally, the AAO observes that the record includes an additional statement from the same evaluator in which he lists his title as "Intern." *Statement from [REDACTED] and [REDACTED] Supervisor, Center for Child and Family Services, dated February 21, 2008.* While this statement is also signed by the evaluator's supervisor, a Licensed Clinical Social Worker, the AAO notes that the undated statement has no supervisory signature from a licensed healthcare professional. As such, the AAO finds the undated evaluation to lack the insight and elaboration required in a psychological evaluation, and to be of diminished value to a determination of extreme hardship. The statement signed by the Licensed Clinical Social Worker observes that the applicant's spouse was in great distress at the time of his assessment and has thoughts of suicide due to being separated from the applicant. *Statement from [REDACTED] and [REDACTED]*

Supervisor, Center for Child and Family Services, dated February 21, 2008. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter fails to state how many interviews of the applicant's spouse were conducted by the Licensed Clinical Social Worker or discuss the bases on which she reached her conclusions. Moreover, the Licensed Clinical Social Worker fails to provide a clinical diagnosis of the distress she states is being experienced by the applicant's spouse or to discuss, with any specificity the type or extent of the impairment these conditions are causing. Accordingly, the additional evaluation also fails to reflect the insight and elaboration required in a psychological evaluation, thereby rendering its findings speculative and diminishing its value to a determination of extreme hardship.

The applicant's spouse notes that being separated from the applicant affects him on a financial level, as he sends money to his spouse in Mexico. *Statement from the applicant's spouse*, dated February 26, 2008; *Money remittances*. While the AAO acknowledges this documented expense, it notes that the record does not include documentary evidence to establish the applicant's spouse's financial circumstances, including proof of his income and his other monthly expenses. Moreover, the record does not demonstrate that the applicant is unable to contribute to her family's financial well-being from a place other than the United States. The record fails to include published country conditions reports documenting the economy and employment opportunities in Mexico.

The AAO notes that the record includes a statement from a doctor treating the applicant, which indicates that on April 21, 2009 she was diagnosed with cholesterol, systematic arterial hypertension, "expose to a heart attack" and neurosis. *Statement from* [REDACTED] *Guanajuato, Mexico*, dated April 21, 2009. The physician states that the situation is under control and that the applicant is under medical treatment and supervision to avoid further complications. *Id.* The AAO acknowledges the submitted statement, but notes that it fails to indicate the severity of the applicant's conditions or how they affect her ability to function on a daily basis. The AAO also notes that the physician does not specifically define his diagnoses of "expose to a heart attack" or neurosis. While the AAO does not diminish the seriousness of the applicant's health condition, it observes that the record makes no mention of its impact upon the applicant's spouse. As previously noted, neither the applicant nor her children are qualifying relatives for the purpose of this case and any hardship they may endure will only be assessed to the extent it affects the applicant's spouse.

The applicant's spouse states that the applicant is his wife and the mother of his children, and that no one can take her place. *Statement from the applicant's spouse*, dated March 20, 2007. While the AAO acknowledges the emotional bonds between the applicant and her spouse, 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 recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he 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 her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.