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U.S. Citizenship and Immigration Services  
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CDJ 2004 733 307 (relates)

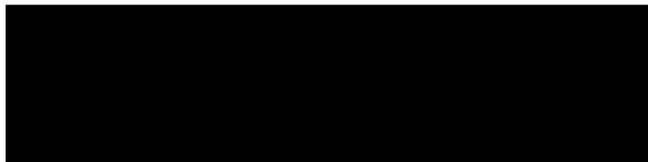
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IN RE:



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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 Officer-in-Charge, 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 was also found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on August 4, 2001. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated August 17, 2006, the officer-in-charge found that the record failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated August 25, 2006, counsel states that the denial of the applicant's waiver application was based on an excessively stringent interpretation of the meaning of "extreme hardship" to a qualifying family member. He states that the evidence submitted with the original application was sufficient to establish that her spouse suffers extreme hardship due to her being barred from re-entering the United States. Counsel states further that he is submitting additional documentation on appeal and that the officer-in-charge improperly states that the application should be denied as a matter of discretion.

The record indicates that on August 4, 2001 the applicant attempted to enter the United States using fraudulent border crossing card, was stopped by a Border Patrol Officer and was returned to Mexico. She does not contest this ground of inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record also indicates that on August 5, 2001 the applicant entered the United States without inspection. The applicant remained in the United States until August 19, 2005. Therefore, the applicant accrued unlawful presence from when she entered the United States on August 5, 2001 until August 19, 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her August 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 and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are 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 experiences or her U.S. citizen children experience due to separation is not considered in section 212(a)(9)(B)(v) and

section 212(i) waiver proceedings unless it is shown that hardship to the applicant and/or her children is causing hardship to the applicant's qualifying relative.

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.

The AAO notes that the record includes a letter from the applicant, a letter from a doctor in Mexico, and a letter from a family member all in Spanish with no English translation attached. Because the applicant failed to submit certified translations of these documents, the AAO cannot determine whether they support 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 a statement, dated August 25, 2006, the applicant's spouse states that his life has changed dramatically since the applicant left the United States and that he has been suffering economically and socially. He states that his daughters, ages two and four years old, are staying with the applicant in Mexico because he cannot care for them and work to support the family. He states that he worries about his children's educational difficulties in Mexico and it makes him very nervous and depressed. He also states that the absence of the applicant is harming his physical and mental health. He states that he is part of a large and close family in Dallas, but no longer attends family gatherings because all he can think of are the problems the applicant and his daughters are having. He states that the

applicant is suffering from allergies in Mexico and his daughters are at an age where they have frequent childhood illness. He states that when his daughters are sick in Mexico he cannot concentrate at work and his nerves feel altered. He states further that he is a truck driver and it is very dangerous for him to be distracted at work. He states that in supporting his wife and daughter in Mexico he sends approximately \$800 to \$1,000 per month to his family, that he is finding it hard to pay all of the family bills and that he tries to save money so that he can visit his family in Mexico. The applicant's spouse states that he also has health problems, which are becoming worse because of the stress of worrying about his spouse and daughters. Specifically, he states that he had surgery in 2004 for a hiatal hernia and that he is supposed to eat a special diet, but finds it difficult to do so because he is working so much and is depressed.

The applicant's sister-in-law, in a statement dated August 22, 2006, states that her brother, the applicant's spouse, has withdrawn from family gatherings and has not been the same since his spouse left for Mexico. The applicant's brother-in-law and sister-in-law, in statements dated August 24, 2006, state that the applicant's spouse has been tremendously affected by being separated from the applicant. They state that the applicant's spouse has lost weight due to depression and has lost interest in spending time with family. Another brother-in-law of the applicant states, in a statement dated August 23, 2009, that he sees a change in the applicant's spouse. He states that the applicant's spouse sometimes visits Mexico, but economically cannot visit often and that the applicant's spouse's children are suffering from having their parents separated.

In a statement from the applicant's mother-in-law, dated August 22, 2006, she states that she has noticed many changes in her son since the separation from the applicant. She states that he is much thinner and mentally confused. She states that before he would visit her often, but he no longer takes part in family gatherings.

The AAO notes that the record also includes a letter from the applicant's church stating that she and her family are members, and a letter from a [REDACTED] stating that the applicant is a trustworthy, responsible person.

The AAO finds that the current record does not support a finding of extreme hardship due to the applicant's inadmissibility to the United States. The documentation in the record shows that the applicant's spouse is suffering emotionally, but the record does not indicate that this suffering rises to the level of extreme hardship. Furthermore, there is no documentation as to the applicant's spouse's ability to relocate to Mexico to be with the applicant and whether he would face hardship in relocating. 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)).

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.

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.