



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

(CDJ 2004 754 880)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

DEC 02 2009

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).

Perry Khew

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 under section 212(a)(9)(B)(i)(II) of 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 his last departure from the United States. The applicant is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his 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 his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated September 14, 2006.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship and United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application. *Form I-290B, Notice of Appeals to the Administrative Appeals Office (AAO); Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a psychological evaluation of the applicant's spouse and children; a car title; a car insurance card; bank statements; a declaration of property value; a statement from the applicant's spouse; a medical letter for the applicant's spouse; a mortgage statement; medical bills; telephone bills; a water bill; a cable bill; a sewer bill; an electric bill; and car insurance bills. 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 March 1999 and voluntarily departed on November 7, 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 10, 2005. The applicant, therefore, accrued unlawful presence from March 1999 until he departed the United States on November 7, 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his November 7, 2005 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 are 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 his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. 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 she resides in Mexico or the United States, as she 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 joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Birth certificate*. Apart from the applicant, she has no immediate family in Mexico. *Attorney's brief*. Counsel asserts that should the applicant's spouse and her children move to Mexico, she would lose a good job she has had for three years. *Id.* While the AAO acknowledges counsel's assertion, it notes that the record does not include documentation, such as a statement from the employer of the applicant's spouse, to establish her employment. The record also does not demonstrate that the applicant's spouse would be unable to obtain employment in Mexico. The record fails to include published country conditions reports documenting the economic situation and availability of employment in Mexico. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Counsel also asserts that the applicant's children would have to give up the opportunity of schooling in the United States for the diminished opportunities available in Mexico. *Attorney's brief*. He also asserts that they would have a higher risk of dropping out of school in Mexico than in the United States. *Id.* While the AAO again acknowledges these assertions, it notes that the record fails to include published country conditions reports documenting the lack of educational opportunities in Mexico. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). The AAO also notes that the applicant's children are not qualifying relatives for the purposes of this case and the record fails to document how any hardship the applicant's children might encounter in Mexico would affect the applicant's spouse, the only qualifying relative in this case. The AAO also finds that in a psychological evaluation of the applicant's spouse, the licensed healthcare professional observed that while the applicant's spouse has acculturated to the United States culture, she also remains acculturated to Mexican culture. *Psychological evaluation by [REDACTED]* dated November 2, 2006. The applicant's spouse speaks, writes, and thinks more in Spanish than in English, she speaks more Spanish than English in the home, and she speaks more Spanish than English with friends. *Id.* Having had the capacity to transition to a foreign culture at age 11, she has the capacity to transition back to Mexican culture. *Id.* Moreover, as the applicant's children are so young, they would experience minimal to no cultural transition if they relocated to Mexico. *Id.* When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Birth certificate*. She has lived in the United States since she was 11 years old and has no family in Mexico. *Attorney's brief*. Based on psychological testing, the licensed clinical psychologist who evaluated the applicant's spouse found her to be suffering from Major Depressive Disorder, Moderate. *Psychological evaluation by [REDACTED]*, dated November 2, 2006. However, the licensed clinical psychologist also found the applicant's spouse's depression to have resulted in no impairment in social, occupational, or other important areas of

functioning. *Id.* Due to a resilient personality structure, she was found able to take care of her two children and to work adequately at her full-time employment. *Id.* The applicant's spouse notes that she is now responsible for all the bills for her family's home and there are too many expenses without the applicant. *Statement from the applicant's spouse*, dated December 8, 2005. The record includes various bill statements documenting the expenses of the applicant's spouse. *See mortgage statement; medical bills; telephone bills; a water bill; a cable bill; a sewer bill; an electric bill; and car insurance bills.* While the AAO acknowledges these documented expenses, it notes that the record does not include earnings statements for the applicant and his spouse to demonstrate that their salaries in the United States and Mexico are insufficient to cover their family's expenses. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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's spouse notes that she has been happily married and has never been apart from the applicant. *Statement from the applicant's spouse*, dated December 8, 2005. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she 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 his spouse if she were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.