



U.S. Citizenship  
and Immigration  
Services

H2

DEC 07 2009

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date:  
(CDJ 2003 635 064) (CIUDAD JUAREZ)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
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 lawful permanent resident. 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 December 6, 2006.

On appeal, the applicant's spouse asserts that she and her family would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) and attached statement from the applicant's spouse*, dated December 13, 2006.

In support of these assertions the record includes, but is not limited to, a statement from the applicant's spouse and a statement from one of the applicant's children. 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 several times. His most recent entry occurred in 1999, after which he remained in the United States for more than one year. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated December 22, 2005. The applicant, therefore, accrued unlawful presence from 1999 until he departed the United States over one year later. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 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 the adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Applicant's spouse's permanent resident card*. The record does not address whether she has any *familial ties* to Mexico. The applicant's child notes that their entire family lives in the United States, employment opportunities are lacking in Mexico, and, due to the applicant's age, there is not much he can hope

for in terms of employment in Mexico. *Statement from the applicant's child*, dated December 8, 2005. While the AAO acknowledges these assertions, it notes that the record fails to include documentation, such as published country conditions reports, regarding the economic situation and employment availability in Mexico. 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)). Furthermore, the applicant himself is not a qualifying relative for the purposes of this case and the record fails to document how any hardship the applicant might encounter as a result of his inadmissibility would affect his spouse, the only qualifying relative. The record does not indicate that the applicant's spouse suffers from any type of health condition, mental or physical, that would require treatment in Mexico or that she would be unable to receive this treatment in Mexico. 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. *Applicant's spouse's permanent resident card*. The applicant and his spouse have five adult children together, all of whom live in the United States. *Birth certificates; Statement from the applicant's child*, dated December 8, 2005. The applicant's spouse states that she is working as many hours as possible in order to provide for herself and for her husband, and cannot afford to travel on a regular basis to see him. *Statement from the applicant's spouse*, dated December 13, 2006. While the AAO acknowledges this statement, it notes that the record fails to include any documentation, such as rent/mortgage statements, credit card bills or proof of household expenses, to establish the financial burden faced by the applicant's spouse. Additionally, the record does not include any tax statements or letters of employment for the applicant's spouse showing her income. 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)). Furthermore, there is no documentary evidence in the record that establishes that the applicant would be unable to obtain employment and contribute to his family's financial well-being from a location other than the United States. The applicant's child states that her mother is feeling emotional strain as a result of her separation from the applicant and cries constantly. *Statement from the applicant's child*, dated December 8, 2005. She also states that she and her siblings are aching to be with the applicant and cannot understand why he is separated from his family. *Id.* While the AAO acknowledges these statements, it notes that the record fails to offer documentary evidence concerning the emotional impact of separation on the applicant's spouse. It also notes that the applicant's children are not qualifying relatives for the purposes of this case and that the record fails to document how any hardship they are experiencing affects their mother, the only qualifying relative.

The applicant's spouse states that she is nothing without the applicant, and he is her life and love. *Statement from the applicant's spouse*, dated December 13, 2006. 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, when all the hardship factors are considered in the aggregate, the AAO does not find the record to distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. 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.