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FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: NOV 04 2009  
(CDJ 2004 803 047) (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:  
[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 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 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's spouse and three children are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States. The record is not clear as to the legal status of the applicant's fourth child.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated June 26, 2006.

On appeal, counsel states that the AAO should find that the applicant has established that her spouse would suffer extreme hardship if the waiver were denied and that favorable exercise of discretion is warranted. *Brief in Support of Appeal*, at 7-8, dated July 15, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a psychological evaluation and medical records for the applicant's spouse, statements from the applicant's children, financial records for the applicant's spouse, and education-related documents for the applicant's children. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in August 1994, departed the United States in August 1997, entered without inspection in September 2001 and departed the United States in October 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until August 1997, when she departed the United States the first time, and from September 2001, the date of her second entry, until October 2005, the date of her most recent departure. Based on her second period of unlawful presence, the applicant is 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 and seeking readmission within ten years of her October 2005 departure from the United States.

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 or parent of the applicant. Hardship to the applicant or her children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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).

*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. These factors include the presence of lawful permanent resident or United States citizen spouse or parent in 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 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event he relocates to Mexico. The applicant's spouse states that he suffers from arterial hypertension, medication may not be as readily available in Mexico, and he would suffer from the poor quality of medication supplied in Mexico; his children are prone to ear infections, colds and fevers and they would suffer from the poor quality of medical facilities and lack of adequate prescription drugs; and, as his children are not Mexican citizens, they would not be provided medical benefits, their medical costs would have to be paid out-of-pocket, and he would not be able to find a job that pays enough to cover the costs. *Applicant's Spouse's Statement*, at 1-2, dated September 21,

2007. Prior counsel states that the inferior educational system in Mexico will have a physiological impact on the applicant's children. *Brief in Support of Appeal*, at 5, dated July 15, 2006. The record includes medical documentation in the form of doctor's notes and published articles on hypertension, but the notes are handwritten and illegible. The record does not include sufficient documentary evidence of the potential severity of any of the applicant's spouse's medical issues in the event that he relocates to Mexico. The record also fails to provide documentary evidence that his children are prone to the aforementioned medical problems or that he would be unable to find employment in Mexico. The record does not include country conditions information regarding healthcare or education in Mexico. 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). **Going on record without supporting** documentation will not meet the applicant's burden of proof in 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)). Moreover, the record does not include evidence of how any hardship the applicant's children's might experience upon relocation would cause hardship to their father, the only qualifying relative.

The record does not include sufficient evidence of emotional, financial, medical or any other hardships that, in the aggregate, establish that the applicant's spouse would suffer extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he and the applicant have three children; the applicant has a child from a previous relationship; their children would suffer extreme hardship due to separation from the applicant; he is the sole provider for his children and the applicant; he would be forced to seek assistance to watch over his children; he owns a trucking business and is often gone for days at a time; he would have to abandon his business or employ a full-time sitter and both options would cause great financial hardship; he suffers from depression, anxiety insomnia, headaches, nightmares, irritability, memory problems, withdrawal, gastrointestinal problems, hopelessness, feelings of paranoia, and arterial hypertension brought on by the elevated stress he has been enduring; his children are overwhelmed with thoughts of depression, they have a difficult time concentrating in school and focusing on their work, and his daughter has had to repeat the second grade; he fully supports the applicant financially in Mexico, sending her hundreds of dollars on a weekly or semi-weekly basis and he may not be able to work enough to adequately support the applicant and their children; and his visits to Mexico cause him financial hardship as he has to spend money to travel and put his business on hold. *Applicant's Spouse's Statement*, at 1-2. The record reflects that the applicant's spouse is sending money to the applicant in Mexico. Tax records establish that the applicant's spouse owns a trucking company. *Applicant and Spouse's 2007 Form 1040, Schedule C*, dated April 7, 2007. The record includes statements from the applicant and three of her children detailing the difficulties the children are experiencing without the applicant. *Family Statements*, dated August 2 and 3, 2007.

The applicant's spouse was evaluated by a psychologist who states that he is suffering from Major Depressive Disorder, Anxiety Disorder, Insomnia, and Adjustment Disorder due to separation from

the applicant. *Psychological Evaluation*, at 2, dated March 6, 2007. The record includes individual therapy records for the applicant's spouse. The most recent report reflects poor progress. *Therapy Record*, dated June 19, 2007. The AAO also notes that the record contains medical reports that establish that the applicant's spouse was diagnosed with depression and anxiety in 2006 and referred for treatment. A follow-up note from March 20, 2007 indicates that the applicant's spouse is continuing treatment but is not doing well. Based on the totality of the evidence in the record, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States without the applicant.

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.