



U.S. Citizenship
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FILE: [Redacted]
(CDJ 2004 737 797)

Office: CIUDAD JUAREZ, MEXICO

Date NOV 04 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 Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, 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's spouse is a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 4, dated March 8, 2007.

On appeal, counsel states that there is evidence of hardship to the applicant's spouse, and the applicant's spouse has not shown a callous disregard of U.S. laws and total disregard for the United States. *Brief in Support of Appeal*, at 2, 4, dated May 2, 2007.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse and her children, letters of support for the applicant and school-related documents for the applicant's oldest child. 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 December 2002 and voluntarily departed the United States on March 27, 2006. The applicant accrued unlawful presence during this entire period of time. 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 last 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. This prong of the waiver analysis is not addressed by the applicant. There is no evidence of emotional, financial, medical or any other type of hardship should the applicant's spouse reside in Mexico. As such, the AAO finds that the record does not establish that the applicant's spouse would suffer extreme hardship if he relocated to Mexico permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse is forced to work 12-14 hour days, he worked eight hour days when the applicant was present, and he works the extra hours to support his children and the applicant who is unable to find work in Mexico; the applicant's mother passed away from cancer at the age of 52, the applicant has been told by her doctor that she is at high risk of getting cancer, she was ordered to under go tests a couple of times per year, and she was able to have these tests done at a free clinic; no such clinic exists in Mexico and the applicant's

spouse is therefore faced with an increased financial burden and the terrible thought of the applicant not getting adequate health care. *Brief in Support of Appeal*, at 3.

Counsel also asserts that the applicant's children are deprived of the applicant's presence and of the applicant's spouse's presence due to his longer work hours; the applicant's spouse is forced to raise three children on his own; the oldest child has been experiencing severe depression since being separated from the applicant and has missed school and been suspended on one occasion, requiring the applicant's spouse to repeatedly take time off from work to deal with this issue; the applicant's middle child has been experiencing severe depression since being separated from the applicant and has become very withdrawn, she is suffering from embarrassment and confusion related to her inability to talk to anyone about female issues, she has to deal with these issues on her own and the applicant's spouse is suffering extreme frustration due to his inability to assist his daughter with her problems; and the applicant's youngest child desperately misses the applicant and the applicant's spouse fears his youngest child is keeping his feelings bottled up, which could lead to dangerous mental health consequences. *Id.* at 3-4. With the exception of the applicant's older child's problems in school, the AAO notes that counsel's claims are not supported with documentary evidence. The AAO also notes that there is no documentary evidence of how the applicant's older child's problems are affecting his father. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. 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 applicant's spouse states that he is not attending to his children the way he should be, his youngest son has to wait hours for him to pick him up from school due to his job schedule, he feels terrible that his youngest son has to wait for him, he and his children need the applicant beside them, they are suffering every day, and he and the applicant used to support their children in everything. *Applicant's Spouse's Statement*, undated. The applicant's spouse states his children have become accustomed to life in the United States, his children are interested in going to college and participate in school activities, the possibility of being separated is a nightmare, his family is used to spending the day together and going to church for Sunday religious services, he cannot overcome the feeling of loneliness knowing that his family will be leaving soon, he is experiencing an enormous amount of stress, his children need him and the applicant to support and guide them through the difficult stages of life, he needs the applicant, the applicant is his strength and companion and he feels lost without her. *Applicant's Spouse's Initial Statement*, dated April 3, 2006.

The applicant's older son states that the thought of the applicant being sent away is terrifying, she will not be there when he needs someone to talk to or give him strength when he feels like giving up, she will not be at his games to cheer him on, her presence is very important to him, and he needs her a lot. *Applicant's [REDACTED] Statement*, dated March 27, 2006. The record reflects that the applicant's older son was dismissed from his high school due to a disciplinary matter and that he also had two prior minor disciplinary issues. *Letter from Applicant's [REDACTED]* dated April 25, 2007. The applicant's daughter states that her family is experiencing a great deal of pain and anxiety, she will be graduating with honors from the eighth grade, she will be receiving recognition for her grades and she wants her mother to see her receive medals and awards that day.

Applicant's Daughter's Statement, dated March 24, 2006. The applicant's youngest son states that he has excellent grades thanks to the applicant, he wants the applicant to see his project at the science fair, he is very sad without the applicant, she takes care of the family and the family will struggle enormously without her. *Applicant's [REDACTED] Statement*, dated March 27, 2006. The record is not clear as to the legal status of the applicant's children, nor does it include sufficient evidence of how their hardship is affecting the applicant's spouse, the only qualifying relative in this proceeding.

The record reflects that the applicant's spouse would encounter difficulties without the applicant. However, the record does not contain sufficient documentary evidence of emotional, financial, medical or other hardships that, in the aggregate, establish 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.