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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE:

[REDACTED]
(CDJ 2004 842 421)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: NOV 04 2009

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)

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 United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child.

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 February 16, 2007.

On appeal, the applicant's spouse asserts that she and her child have suffered extreme hardship. *Form I-290B, Notice of Appeals to the Administrative Appeals Office (AAO) and attached statement from the applicant's spouse*, dated March 16, 2007.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse and medical statements for the applicant's spouse. 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 2002 and voluntarily departed in November 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated February 16, 2006. The applicant, therefore, accrued unlawful presence from March 2002 until he departed the United States in November 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his November 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 child 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 the United States. *Form G-325A, Biographic Information sheet, for the applicant*. The record does not address whether the applicant's spouse has any familial or cultural ties to Mexico. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect

her adjustment to Mexico. The applicant's spouse notes that her son has been sick lately because of the food in Mexico. *Statement from the applicant's spouse*, dated March 16, 2007. While the AAO acknowledges this statement, it notes that the applicant's child is not a qualifying relative for the purposes of this case and the record fails to document how any hardship the applicant's child may encounter would affect his mother, the only qualifying relative. The record includes a statement from a licensed healthcare professional, written on a prescription form, that indicates the applicant's spouse suffers from biliary colic and needs gallbladder surgery to stop the pain and prevent multiple potential serious consequences or gallstones. *Statement from* [REDACTED], dated March 12, 2007. While the AAO acknowledges this health problem, as documented in the record, it notes that the applicant has failed to provide documentation, such as published country conditions reports, that demonstrates that his spouse could not obtain adequate medical care in Mexico. 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 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 the United States. *Form G-325A, Biographic Information sheet, for the applicant*. The applicant's spouse states it will be difficult for her to handle her child's entering of school without the economic and moral support of the applicant. *Statement from the applicant's spouse*, dated March 16, 2007. She notes that her family has used up all of their savings and she now has to live with her mother because she lost her apartment. *Id.* While the AAO acknowledges these statements, it notes that the record does not include any documentation, such as rent/mortgage statements, credit card statements, or utility bills, regarding the monthly expenses facing the applicant's spouse. 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 evidence in the record to show 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 record includes a statement from a licensed healthcare professional, again written on a prescription form, that indicates the applicant's spouse suffers from depression and is being placed under treatment for an estimated six months to one year. *Statement from* [REDACTED], dated March 2, 2007. While the AAO acknowledges this diagnosis, it finds the brief statement provided for the record to be of limited evidentiary value. It notes that the applicant's spouse's physician does not address the basis on which he reached his conclusions regarding the applicant's spouse's mental status, the reasons for her depression, the extent to which her health affects her ability to function or care for her child, what type of treatment she will be receiving or her prognosis. In the absence of a detailed mental health analysis, the AAO does not find the medical statement in the record to establish that the applicant's spouse is experiencing extreme emotional hardship. As previously noted, the record also includes a statement from a licensed healthcare professional noting that the applicant's spouse suffers from biliary colic and needs gallbladder surgery to stop the pain and prevent multiple potential serious consequences or gallstones. *Statement from* [REDACTED], dated March 12, 2007. The AAO notes that the record does not address how the health condition of the applicant's spouse would be affected if she remains in the United States separated from the applicant or establish that she requires the applicant's assistance to deal with this condition.

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.