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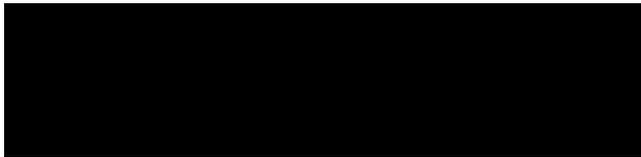
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

[Redacted]
(CDJ 2004 758 081)

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 her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their U.S. citizen child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated October 27, 2006.

On appeal, the applicant's spouse states that he cannot find a reason for the denial of the applicant's waiver application. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) and attached statement from the applicant's spouse*, dated November 20, 2006.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's spouse; a rent statement; a car insurance policy; a cell phone bill; medical records for the applicant's spouse; and a Kaiser-Permanente Travel Advisory for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes several documents in the Spanish language unaccompanied by a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not consider these documents.

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 January 2003 and voluntarily departed in October 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 26, 2005. The applicant, therefore, accrued unlawful presence from January 2003 until she departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her October 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 her child would experience as a result of her 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 he resides in Mexico or the United States, as he 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 joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Naturalization certificate*. The record does not address whether he has any family ties to Mexico. The applicant's spouse was diagnosed in 2005-2006 with diarrheal illness, Bell's palsy, viral myocarditis, and viral meningitis. *Medical records, Kaiser Permanente*, dated March 2005 and March 2006. While the AAO acknowledges these health conditions as documented by licensed healthcare professionals, it notes that the record does not address how the applicant's health would be affected by relocation to Mexico. The record does not include any documentation, such as published country conditions reports, regarding the availability and adequacy of medical treatment for these conditions in Mexico. The record also does not demonstrate that the applicant's spouse would be unable to obtain employment in Mexico. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Naturalization certificate*. As previously noted, the applicant's spouse was diagnosed with diarrheal illness, Bell's palsy, viral myocarditis, and viral meningitis in 2005-2006. *Medical records, Kaiser Permanente*, dated March 2005 and March 2006. The applicant's spouse notes that he is in the process of overcoming his health conditions and that it was very difficult to be separated from the applicant while he needed her help in recuperating. *Statement from the applicant's spouse*, dated November 20, 2006. While the AAO acknowledges the applicant's spouse's diagnosed health problems, it notes that he states he is recuperating and the record fails to establish that his conditions are chronic in nature and are likely to recur. Moreover, the record does not address how any health problems that may persist affect his daily life and whether he needs assistance. The applicant's spouse also notes that his expenses have increased due to his being separated from the applicant, as he pays rent and his cell phone bill has increased significantly, as that is the only way he can communicate with his spouse and son. *Statement from the applicant's spouse*, dated November 20, 2006; *rent statement; cell phone statement*. While the AAO acknowledges these expenses as documented in the record, it notes that the record fails to include tax statements or earnings statements for the applicant's spouse showing his income. Accordingly, the AAO is unable to determine his financial situation. Furthermore, there is nothing in the record to show that the applicant would be unable to obtain employment and contribute to her spouse's financial well-being from a location other than the United States.

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 his separation from the applicant. However, the record does not distinguish his situation, if he 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 her spouse if he were to reside in 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.