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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  
Services

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FILE:

[REDACTED]

(CDJ 2004 724 580)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

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:

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 United States citizen and is the daughter of a United States citizen father and lawful permanent resident mother. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse, parents and child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated August 24, 2006.

On appeal, the applicant contends that her qualifying relative would suffer extreme hardship and United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) and attached statement*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a statement from the priest at the applicant's church; a medical statement related to the applicant's mother-in-law; and statements from family members. 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 May 1990 and remained until July 26, 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 14, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States on July 26, 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her July 26, 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 she is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse, father, or mother 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, father or mother must be established whether he or she resides in Mexico or the United States, as he or 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 father or mother travels with the applicant to Mexico, the applicant needs to establish that his father or mother will suffer extreme hardship. The applicant's parents were born in Mexico. *Form G-325A, Biographic Information, for the applicant; U.S. Passport for the Applicant's Father*. The record does not address how the applicant's father or mother would be affected if either one resides in Mexico. As the record does not address this aspect of the hardship claim, the AAO is unable to find that the applicant's father or mother would experience extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her father or mother if either one were to reside in Mexico.

If the applicant's father or mother resides in the United States, the applicant needs to establish that her father or mother will suffer extreme hardship. As previously noted, the applicant's parents are natives of Mexico. *Form G-325A, Biographic Information, for the applicant; U.S. Passport for the Applicant's Father*. The applicant's father and mother state that they need their daughter back in the United States, and that it is difficult and sad not to have her with them, especially on holidays. *Statement from the applicant's father and mother*, dated September 1, 2006. The record does not further address how the applicant's father or mother would be affected if he or she remains in the United States. While the AAO acknowledges the difficulties faced by the applicant's parents, it notes that *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. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her father or mother if either were to remain in the United States.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address whether the applicant's spouse has any familial or cultural ties to Mexico. The applicant's spouse notes that he cannot begin to answer the question of how he could support his family in Mexico. *Statement from the applicant's spouse*, dated September 11, 2006. The AAO notes that the record does not include documentation, such as mortgage/rent statements, utility bills, or credit card statements to demonstrate the expenses of the applicant and her spouse. Nor does the record give any indication of the applicant's spouse's level of education, work experience, or language abilities that may affect his adjustment to Mexico. Additionally, the record fails to include published country conditions reports that document the employment opportunities and economic situation in Mexico. The applicant's spouse states that he has accompanied the applicant to her consular appointments in Mexico because Ciudad Juarez is unsafe. *Statement from the applicant's spouse*, dated December 9, 2005. The AAO again notes that the record does not include published country conditions reports documenting that the applicant is at risk 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)). Moreover, the applicant is not a qualifying relative in this proceeding and the record does not establish that any risks faced by the applicant in Mexico would result in hardship to her spouse, the only qualifying relative, upon relocation. 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. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. The applicant's spouse states that his 72-year-old mother fell and broke her shoulder. *Statement from the applicant's spouse*, dated September 11, 2006. As a result, the applicant's spouse's mother is in a nursing home and the applicant's spouse is having to take on more responsibilities in caring for his child, as he no longer has the assistance of his mother. *Id.* The AAO acknowledges this statement and notes that the record contains a statement from Advanced Healthcare, S.C. that states the applicant's mother-in-law is unable to babysit for her grandchildren. *Statement from [REDACTED]*, dated September 15, 2006. While this statement does not indicate the reason that the applicant's mother-in-law is unable to care for her grandchildren, the AAO accepts it as proof that she is no longer able to assist her son with his childcare responsibilities. However, the record fails to address whether there are additional family members, such as the applicant's parents, who could assist in providing childcare. The applicant's spouse notes that being separated from the applicant has affected him financially, as he has had to incur travel expenses to Ciudad Juarez and send money to the applicant when he is able to do so. The AAO notes, however, that the record fails to include documentation of the applicant's income, his monthly expenses, his travel to Mexico or his remittances to the applicant in Mexico. *See Matter of Soffici, supra*. Furthermore, there is nothing in the record to show that the applicant would be unable to obtain employment and contribute to her family's financial well-being from a place other than the United States.

[REDACTED] notes that the separation of the applicant from her spouse is not only hurting them, but is denying their daughter a mother and a father together. *Statement from [REDACTED]*, dated September 11, 2006. While the AAO acknowledges these difficulties, it notes that 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.