



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H₂

[Redacted]

FILE:

(CDJ 2002 517 356)

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:

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 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 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 lawful permanent resident and has three United States citizen children. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen children.

The Officer in Charge 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 Officer in Charge*, dated September 22, 2006.

On appeal, the applicant states that his family is suffering extreme hardship. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

The record includes, but is not limited to, a medical letter for the applicant's child. The AAO notes that the record also includes a document in the Spanish language unaccompanied by a certified translation. Accordingly, the AAO will not consider this document. *See* 8 C.F.R. § 103.2(b)(3). 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 April 1998 and voluntarily departed in August 2001, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico, dated November 22, 2005*. The applicant, therefore, accrued unlawful presence from April 1998 until he departed the United States in August 2001. In applying for an immigrant visa, the applicant is seeking admission within ten years of his August 2001 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 children 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 the 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 is a native of Mexico. *Form G-325A, Biographic Information, for the applicant*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record also fails to indicate whether the applicant's spouse has familial and cultural ties in Mexico. The record does not address employment

opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record does not indicate that the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, that she would be unable to receive adequate care. The applicant's spouse notes that her children suffer from asthma. *Form I-290B*. She asserts that her children, who currently live in Mexico, are exposed to an environment full of mold, which is slowly killing them. *Id.* The record includes documentation that establishes that the applicant's oldest child is being treated for bronchial asthma in Mexico. *Statement from* [REDACTED] dated October 15, 2006. While the AAO acknowledges the applicant's oldest child's medical condition, it notes that he is not a qualifying relative for purposes of this case and that the record fails to document how any hardship he or the applicant's other children are encountering in Mexico would affect their mother, 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 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 is a native of Mexico. *Form G-325A, Biographic Information, for the applicant*. The applicant's spouse asserts that she is suffering because of her separation from the applicant. *Form I-290B*. She further states that their children must return to the United States because of their asthma and that she will be unable to support the children by herself. The record, however, does not provide any documentation to support the applicant's spouse's claims of emotional or financial hardship. Going on record without supporting documentation is not sufficient to 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)). The AAO notes that the applicant's oldest son has bronchial asthma, but finds the record to lack documentation that would establish that his health would create an extreme hardship for his mother upon his return to her care in the United States. Accordingly, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

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.