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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO

Date: OCT 01 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, 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 (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 is married to a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated July 7, 2006, the district director found that the record failed to establish extreme hardship to the applicant's U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly. On appeal, the applicant submits additional documentation of hardship.

The record indicates that the applicant entered the United States without inspection in 1994. The applicant remained in the United States until October 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until October 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her October 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 and/or parent of the applicant. Hardship the applicant or her child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The record of hardship includes a statement from the applicant, a statement from the applicant's spouse, and a statement from the applicant's daughter. The AAO notes that numerous documents were submitted in Spanish without certified English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico and in the event that he resides 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 AAO will consider the relevant factors in adjudication of this case.

In a statement, dated July 27, 2006, the applicant states that she writes with much sadness because she is separated from her spouse and living in Mexico. She states that it is very difficult and stressful for their marriage to be separated. The applicant states that she is pregnant and alone in Mexico with no family to help her. She states that she fears losing her child because of all the stress and worry she is experiencing. She states that her health is delicate, as she is 39 years old and pregnant. She also states that she lost one baby and does not want to lose another. She states that in the United States her spouse has medical insurance and she can access the medical help she needs for herself and for the baby. She states that this medical insurance does not cover her in Mexico and her husband cannot afford to pay for care in Mexico. The applicant states that her daughter and husband live in Mission, Texas and that her daughter is an adolescent, who needs her companionship. She also states that her spouse is not concentrating or sleeping well and that these symptoms are dangerous for someone in his line of work. She states that her U.S. citizen spouse is worried and stressed about her living in Mexico and about leaving their fourteen-year-old daughter with non-family members to look after her.

In a statement dated July 25, 2006, the applicant's daughter states that she is fourteen-years-old and needs her mother desperately. She states that being separated from the applicant has hurt her mentally and emotionally, which has caused her to stop attending regular school. She states that there is no one to take her to and from school so she has been put in a program where she can study from home. She states that she has problems concentrating because she misses her mother. She states that she and her father are afraid that her mother runs the risk of dying while in Mexico.

The AAO notes, as stated above, hardship the applicant or her child experience is not considered in section 212(a)(9)(B)(v) waiver proceedings unless hardship to the applicant and/or her child is shown to be causing hardship to the applicant's U.S. citizen spouse.

In a statement, dated July 24, 2006 the applicant's spouse states that he has been suffering from the absence of his wife. He states that he has to pay rent in Mexico and he visits the applicant every week to fifteen days. The applicant's spouse states that because of his work hours he has to hire a non-family member to care for his fourteen-year-old daughter and he is worried that she might be hurt or sexually abused. He states that he needs the applicant to be caring for their daughter. The applicant's spouse states that his daughter is going through a lot of mental and emotional problems without the applicant in her life. He also states that he is worried about the applicant's health and her ability to receive medical care in Mexico.

The AAO notes that the current record does not contain any supporting documentation regarding the claims of hardship made by the applicant's spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). In addition, the applicant's spouse does not make any claims regarding the hardship he would suffer if he were to relocate to Mexico to be with 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.