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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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OCT 01 2009

FILE:

(CDJ 2004 731 962)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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:

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).

John F. Grissom
Acting 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.

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 August 24, 2006.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship. *Form I-290B and attached brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from [REDACTED] dated September 7, 2006; an employment letter for the applicant's spouse; a statement from the applicant's spouse's mother; statements from the applicant's spouse's sisters; statements from the applicant's spouse's co-workers; court documents for the applicant's spouse; and a psychological report for the applicant. 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 December 1999 and departed in October 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 17, 2005. The applicant, therefore, accrued unlawful presence from December 1999 until he departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 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.¹

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 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.

¹ The AAO observes that the record includes a psychological report for the applicant that indicates he was arrested in Mexico for imprudent homicide. *Psychological Report by [REDACTED] and [REDACTED]* dated November 14, 2005. The AAO notes that the record does not include any conviction documents or admissions of guilt by the applicant relating to this arrest. However, as the waiver of an inadmissibility under section 212(a)(2)(A)(i)(I) of the Act would also require the applicant to establish extreme hardship to his spouse, the AAO will not address whether the applicant may also be inadmissible for having been convicted of a crime involving moral turpitude.

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. *Birth certificate*. Her family resides in the United States. *Statements from the applicant's spouse's mother and two sisters*, undated and dated September 19, 2006. The record fails to indicate whether the applicant's spouse has any familial or cultural ties to Mexico. The applicant's spouse does not speak Spanish well. *Statement from the applicant's spouse*, undated. The applicant's spouse states she cannot live in Mexico because there is no job available for the applicant or herself. *Statement from the applicant's spouse*, dated September 19, 2006. She also states that she could not live away from her family and that she is undergoing medical treatment to help her conceive a child. *Id.* While the AAO acknowledges the applicant's spouse's assertion regarding employment in Mexico, it notes that the record does not document, through published country conditions reports, the economic situation in Mexico and the lack of employment opportunities. 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)). The applicant's assertion that she is receiving treatment to help her conceive is supported by a report from [REDACTED]. *Statement from* [REDACTED]

[REDACTED] However, the AAO notes that [REDACTED] is based in Mexico. The AAO acknowledges that the applicant's spouse suffered a head injury when she was nine years old due to an auto-pedestrian accident. *Statement from* [REDACTED] [REDACTED], dated September 7, 2006; *Court documents, District Court of Harris County, Texas, 80th Judicial District*, dated May 4, 1992. While the applicant's spouse's licensed professional counselor notes that she suffers cognitive and emotional deficits as a result of her brain injury and her mother notes that she has difficulty opening a soda or cracking an ice tray, neither of these statements address how the residual effects of her injury would impact a relocation to Mexico. *Statement from* [REDACTED] [REDACTED], dated September 7, 2006; *Statement from the applicant's spouse's mother*, undated. As such, 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 was born in the United States and her family resides in the United States. *Birth certificate*; *Statements from the applicant's spouse's mother and two sisters*, undated and dated September 19, 2006. The applicant's spouse states she is exhausted and devastated by this separation. *Statement from the applicant's spouse*, dated September 19, 2006. She notes that she believes her situation is harder than other people because she has become emotionally dependent on the applicant due to the fact that she is not as emotionally strong as the average person. *Id.* The applicant's spouse suffered a head injury when she was nine years old due to an auto-pedestrian accident. *Statement from* [REDACTED] [REDACTED], dated September 7, 2006; *Court documents, District Court of Harris County, Texas, 80th Judicial District*, dated May 4, 1992. Although she has recovered well physically from that

accident, she experiences subtle cognitive deficits related to information processing. *Statement from* [REDACTED], dated September 7, 2006. While the AAO acknowledges this statement, it notes that the licensed professional counselor does not identify or discuss the deficits to which she refers, stating only that the cognitive deficits relate to information processing. She does not offer any information as to how the applicant's spouse's brain injury has impaired her ability to cope emotionally. There is also no indication as to how she identified the deficits she cites. She does not state that she tested for them or that she obtained this information from having read the applicant's spouse's medical records. The AAO notes that family members have observed the frequent crying and emotional upset of the applicant's spouse. *Statements from the applicant's spouse's mother and two sisters*, undated and dated September 19, 2006. Co-workers have also noted that the applicant's spouse cries a lot at work and seems depressed about being separated from the applicant. *Statements from co-workers*, dated September 13, 2006 and September 15, 2006. 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.

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.