



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

H/2

[REDACTED]

FILE: [REDACTED]  
(CDJ 2004 760 348)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **OCT 01 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:

[REDACTED]

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 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 his last departure from the United States. The applicant's spouse and two children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated January 31, 2007.

On appeal, counsel states that the district director erred in finding that no hardship exists to the applicant's spouse and that the applicant's spouse is suffering extreme hardship as a result of the applicant's exclusion. *Brief in Support of Appeal*, at 1, dated February 22, 2007.

The record includes, but is not limited to, counsel's brief, pay stubs for the applicant's spouse, the applicant's spouse's statements, a medical letter for the applicant's spouse, and a physician's letter for the applicant's son. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in March 2000 and departed the United States on January 3, 2006. The applicant accrued unlawful presence during this entire period of time. The applicant is 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 and seeking readmission within ten years of his January 3, 2006 departure from the United States.

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 or parent of the applicant. Hardship to the applicant or his two children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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).

*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. These factors include the presence of lawful permanent resident or United States citizen spouse or parent in 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 in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event she relocates to Mexico. Counsel states that the applicant has not been able to find employment in Mexico, he and the children are residing with his parents, they live in a small village that has eight ranches, the ranches do not have hot water and electricity is rationed, the closest hospital is 90 minutes away by car, and the family would not be able to survive as jobs are scarce and unavailable. *Brief in Support of Appeal*, at 1-2. However, the record does not contain documentary evidence that supports these claims. The AAO notes that without documentary evidence to support them, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record reflects that the applicant's younger child has had recurring respiratory infections due to variable climate conditions, absence of the applicant's spouse, and hygienic and dietary aspects that are not optimal. *Letter from* [REDACTED] dated

February 13, 2007. However, the record does not contain evidence of the severity of the applicant's younger child's medical conditions, whether he is able to receive appropriate treatment in Mexico, or how his medical problems would affect the applicant's spouse if she resided in Mexico. The record does not include evidence of any other hardship to the applicant's children or how this hardship would affect the applicant's spouse if she resided in Mexico. The applicant's spouse states that her mother has diabetes and she and the applicant take her to the doctor, and they give her money for bills, food and medicine. *Applicant's Spouse's First Statement*, at 2, dated January 1, 2006. The record reflects that the applicant's mother-in-law has diabetes and will need treatment for the next few years. *Letter from [REDACTED]*, dated December 21, 2005. However, the record does not contain evidence of the severity of the applicant's spouse's mother's medical condition or how any difficulties she may encounter would affect the applicant's spouse upon separation. The record lacks sufficient documentary evidence of emotional, financial, medical or other hardship factors that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse was eight months pregnant with her second child and was diagnosed with gestational diabetes when the applicant departed to Mexico; she had no alternative but to send her then three-year-old U.S. citizen son to reside in Mexico with the applicant; and the applicant's situation worsened after her delivery, she began to be treated for depression and anxiety attacks, she has been treated with Prozac, and separation from the applicant and her children has made it difficult for her to care for herself and to function. *Brief in Support of Appeal*, at 1. Counsel states that the applicant's spouse found it impossible to financially support the applicant and her older son, while caring for her newborn and working 16-hour shifts between two jobs, and she sent the younger child to reside in Mexico. *Id.* Counsel states that the applicant's spouse works seven days a week, her first job starts at 2:30 A.M. and ends at 2:00 P.M., she has a three hour break where she does errands or gets treatment for her depression, and she works at her second job from 5:00 P.M. to 9:00 P.M. *Id.* at 1-2. The record includes pay stubs from the applicant's spouse's two jobs.

Counsel states that the applicant's spouse is suffering as a direct result of separation from her children, her children are suffering both emotionally and physically, the applicant's spouse is suffering knowing that her older son misses her and is traumatically affected by the living conditions and separation from her, the applicant's spouse is depressed knowing that her younger son is physically not well and she is unable to care or comfort him, the applicant's spouse's younger son has a respiratory infection, and the applicant's spouse is unable to care for her children in the United States as she has no support system other than the applicant. *Id.* at 2.

The applicant's spouse states that it breaks her heart that she cannot see her children, she is the only person who can sustain the family, she has been diagnosed with severe depression, the only thing that keeps her going is that her family is depending on her, the applicant's help is indispensable for her and her children, her younger son has respiratory problems and is not adapting to living in Mexico, her younger son's problems depress her even more and she has anxiety attacks. *Applicant's Spouse's Second Statement*, dated February 14, 2007. The record reflects that the applicant's spouse

is undergoing treatment for depression and anxiety due to separation from the applicant and her children, she is under a doctor's care and is taking Prozac, and the medication alone has not been sufficient to this point. *Letter from* [REDACTED] dated February 13, 2007. As mentioned, the record reflects that the applicant's younger child has had recurring respiratory infections due to variable climate conditions, absence of the applicant's spouse, and hygienic and dietary aspects that are not optimal. *Letter from* [REDACTED] Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States without 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 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.