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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] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO
CDJ 2004 799 175 (relates)

Date **SEP 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Shumway

John F. Grissom
Acting 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 her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), the applicant states that her spouse is facing extreme hardship in the form of financial difficulties and depression. She also states that her spouse was born and raised in the United States and his entire family lives in the United States.

The record indicates that the applicant entered the United States without inspection in January 1998. The applicant remained in the United States until October 23, 2005. Therefore, the applicant accrued unlawful presence from when she entered the United States in January 1998 until October 23, 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 on 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 under 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 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.

The record of hardship includes two statements from the applicant's spouse, a statement from the applicant, a letter from the applicant's spouse's doctor, proof of medication being prescribed to the applicant's spouse, a letter from the applicant's son's school, and a letter from the family's church.

In an affidavit, dated August 1, 2006, the applicant's spouse states that he is going through a severe depression because he cannot have his wife and son with him. He states that he is under so much stress and pain and that he feels depressed and sad. He states that he does not eat well, cannot sleep and has lost weight. He states further that he is seeing a doctor for his depression, but the medicine prescribed is not working and that he does not feel any better. Finally, he states that he has contemplated moving to Mexico, but cannot because he was born and raised in the United States. He states that all of his friends and family live in the United States and moving to Mexico would mean solitude.

In a letter, dated July 28, 2006, the applicant's spouse's doctor, [REDACTED] states that the applicant's spouse is his patient and came to his clinic on July 21, 2006 with symptoms of depression and stress. He states that the applicant's spouse described his symptom as feeling very stressed, not being able to eat, not being able to sleep and feeling very fatigued. He states that after examination he prescribed the applicant medication to help him sleep and scheduled a re-examination in one week to follow-up on his progress. He states that unfortunately the applicant's spouse returned after a week with the same symptoms, so he is moving forward with a new treatment plan. The AAO notes that the record does not indicate what the new treatment plan for the applicant's spouse is, but includes a copy of the prescription given to the applicant's spouse.

In a letter, dated September 22, 2005, the applicant's spouse states that the applicant's inadmissibility will affect him in that his son is very sad that his parents will be separating and that he has to live in another country away from his family and friends. Similarly, in a letter dated September 22, 2005, the applicant states that the separation affects the family very much because they are very close. She states that the separation will be very sad for their son because he does not want to leave his friends, family, and school and go to Mexico. She also states that the separation will be very hard for her because she will have to live without her husband.

The AAO notes, as stated above, that hardship the applicant or her child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless this hardship is shown to cause hardship to the applicant's spouse.

The AAO notes that the record also includes a letter from the applicant's son's school attesting to the applicant's and her spouse's involvement in their son's education and a letter from the family's church, stating that they frequently attend religious services.

The AAO recognizes that the applicant's spouse is experiencing emotional hardship as a result of being separated from his wife and child, but the applicant's spouse has failed to show that he is also experiencing financial hardship as a result of the applicant's inadmissibility or that it would be an extreme hardship to relocate to Mexico to be with his spouse and child. The applicant does not submit any documentation regarding financial hardship. In addition, the existence of family ties to

the United States alone would not warrant a finding that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico. Thus, the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

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)).

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.