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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO
CDJ 2004 801 610

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:

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).

A handwritten signature in black ink that reads "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 August 31, 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), dated September 9, 2006, the applicant's spouse states that the applicant and his one and a half year old daughter are living in Mexico awaiting the approval of the waiver application. He states that his daughter has special needs and suffers from epileptic seizures. He states that she is currently not receiving treatment because she is in Mexico. The applicant's spouse also states that he works fulltime, carries medical insurance for his family and has custody of four other children from a previous marriage who see the applicant as their mother figure. Finally, he states that he is depressed and wants his family back together.

The record indicates that the applicant entered the United States without inspection in March 1997. The applicant remained in the United States until November 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until November 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her November 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 children 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 the Form I-290B from the applicant's spouse, a letter from the applicant's spouse, medical records for the applicant's daughter, and the Judgment of Dissolution for the applicant's spouse's previous marriage.

In a statement the applicant's spouse states that they have a child that suffers from a seizure disorder who has been living in Mexico for a long period of time with the applicant. He states that he does not think staying in Mexico is good for his daughter's health because she needs to see her doctor regularly and she also takes medications. The applicant's spouse again states that he has custody of four other children from a previous relationship and that when the applicant was in the United States she would take care of them. He states that because of his work schedule (4:00am to 6:30pm) he does not have time to care for the children. He states that if the applicant has to stay in Mexico for a long period of time it will be an extreme hardship and would be a financial disaster.

The AAO notes that the record includes a copy of the dissolution of marriage from the applicant's spouse's previous relationship showing that he has primary custody of his four children from that relationship and that he cannot remove the minor children from San Bernardino County without prior written consent of the other party or prior order of the Court. The record also contains a Certification of Medical Impairment for the applicant's daughter, dated November 8, 2005, which states that the applicant's daughter requires medication for a seizure disorder and needs to have follow-up visits with neurology every six months.

The AAO finds that the current record does not contain sufficient evidence to show that the applicant's spouse would experience extreme hardship as a result of the applicant's inadmissibility. The current record does not establish through supporting documentation that the applicant's spouse will suffer extreme hardship as a result of being separated from the applicant. No evidence has been submitted showing the applicant's spouse's financial situation or his ability to find childcare. The record does not include any evidence of the applicant's spouse's employment. In addition, the record does not include any documentation regarding the applicant's spouse's emotional wellbeing and his ability to cope emotionally without the applicant in the United States. 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)).

Similarly, the current record does not establish through supporting documentation that the applicant's spouse will suffer extreme hardship as a result of relocating to Mexico to be with the applicant. The record does not contain any information regarding country conditions in Mexico and the applicant's spouse's ability to find employment in his field of work and/or their daughter's ability to access medical care for her seizure disorder in Mexico. In addition, whereas the record does establish primary custody of four children from a previous marriage, the record does not establish that the mother of these children would not give her consent for the children to relocate to Mexico. Thus, as stated above, the current record does not contain sufficient evidence to show that the applicant's spouse would experience extreme hardship as a result of the applicant's inadmissibility.

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.