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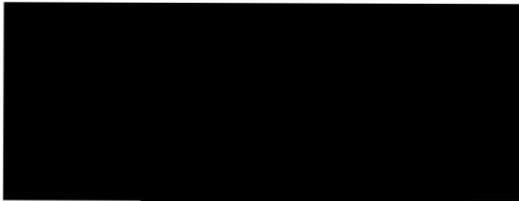
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
(CDJ 2004 808 436)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: FEB 16 2010

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

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

Perry R. Hew
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. He was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 10, 2007.

On appeal, counsel for the applicant asserts that the District Director applied an erroneous standard to the applicant's case, and that the applicant's spouse will experience extreme hardship if the applicant is excluded.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 [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.

The record indicates that the applicant entered the United States without inspection in January 1996 and remained until he departed voluntarily in January 2006. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until January 2006, and is now seeking admission within ten years of

his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, counsel’s brief; statements from the applicant’s spouse; statements from a friend and family of the applicant’s spouse attesting to the impacts of separation and the applicant’s character; photographs of the applicant and his spouse; educational certificates and a diploma for the applicant’s spouse; a letter offering employment to the applicant; a copy of a bank statement for the applicant and his spouse; and an auto insurance card notice.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the applicant's exclusion is destroying his spouse's life, and that without him she is facing the loss of her career, her future educational aspirations and her goal to have children, in addition to the financial and emotional losses created by the separation of a husband and wife. He states that the applicant's spouse is depressed, has become withdrawn and antisocial, is having a hard time functioning at work, and fears that she is going to lose her job because of her mental state. He also indicates that the applicant's spouse's limited finances and school schedule prevent her from visiting the applicant more than twice a year and that she is sending the applicant money to live on because he earns only \$10 a day working at a grocery store in Mexico.

The applicant's spouse states that her separation from the applicant is torture and that every day at work is a struggle for her. She asserts that the head of her department at the high school where she teaches has spoken to her about her disorganized teaching performance and that she is afraid of losing her job. She also notes that, without the applicant, she cannot afford to buy a house, start a family or continue her education. The record contains affidavits from the teacher who heads the high school department in which the applicant's spouse teaches and family members of the applicant's spouse attesting to the applicant's spouse's depression, her distraction at work, and her assistance in caring for aging family members. While the AAO acknowledges these statements, they are not sufficiently objective or probative to establish the assertions of hardship made by counsel and the applicant's spouse.

Counsel's assertions that the applicant's spouse is experiencing depression and because of her mental state may lose her job is not supported by the record. While applicant's spouse's family members report that she is suffering emotionally, the record includes no medical evidence that demonstrates that the applicant's spouse has been diagnosed with depression or any other medical condition. Further, although the statement from the head of the applicant's spouse's high school department indicates that the strain on the applicant's spouse is beginning to affect her job performance and that she is finding it difficult to do her job to the standards she has set for herself, there is no mention that her job is at risk. Without further objective evidence, the AAO is unable to judge the emotional impact of the applicant's absence on his spouse.

The record also fails to establish that the applicant's exclusion would prevent the applicant's spouse from buying a home or furthering her education. The AAO finds the record to contain no documentation that establishes the applicant's spouse's financial situation, i.e., evidence of her income or her expenses, including her support of the applicant in Mexico. Further, the record does not include documentary evidence that demonstrates that the applicant is unable to obtain employment in Mexico that would allow him to support himself and, thereby, eliminate any financial burden on his spouse. Based on its review of the record, the AAO does not find the applicant to have demonstrated that his spouse would suffer extreme hardship if he were to be excluded and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel asserts that the applicant's spouse cannot resolve her situation by moving to Mexico because she cannot work there, because she and the applicant would be unable to support

themselves, could not afford to have children, would be unable to afford health insurance and the applicant's family would be unable to help them. Counsel also points to the applicant's spouse's close relationship with her family in the United States and her responsibility to assist with the care of her great grandfather as further reasons she could not relocate to Mexico. The applicant's spouse states that she would be unemployable in Mexico as teaching positions are open only to Mexican citizens and that even if she found other employment, she and her spouse could not survive on \$20 a day. She further states that she has visited Mexico and that families there break their backs working and cannot progress because they live in a third world country.

The AAO again notes that the record offers no objective evidence to support these assertions, e.g., documentation showing the cost of living and employment statistics for Mexico, the requirements for teaching positions in Mexico or the coverage provided by Mexico's national health care system. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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 applicant's spouse also asserts that she would be separated from her 93-year-old great grandfather for whom she provides care if she relocated to Mexico with the applicant. The record does not, however, contain objective evidence to establish the role that the applicant's spouse plays in caring for her great grandfather, what type of care he requires or that other family members are unable to provide this care in her absence. Neither does the record include documentation that would establish how the applicant's spouse would be affected emotionally if she were to leave her great grandfather and join the applicant in Mexico. Accordingly, the AAO does not find the record to establish that the applicant's spouse would experience extreme hardship if she relocated to Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish her hardship from that commonly associated with removal and exclusion, and it does not, therefore, rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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)(v) of the Act, the burden of proving eligibility rests 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.