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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

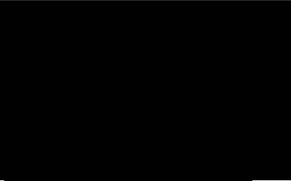


**U.S. Citizenship
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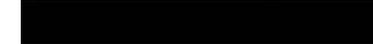


Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

JAN 07 2010

(CDJ 1992 642 126)



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:

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 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 father is a U.S. citizen and his mother is a lawful permanent resident. 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 that the bar to his admission would result in extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated November 6, 2006.

On appeal, the applicant's father states that the district director made an erroneous decision, that he filed a Form I-130 for the applicant before April 30, 2001, all of the applicant's family resides in the United States, the applicant has no place to go and no family to count on in Mexico, and it would be very difficult for him and the applicant's mother and siblings to live in the United States without him. *Form I-290B*, at 2, dated December 6, 2006.

The record includes, but is not limited to, the Form I-290B and evidence of lawful status for the applicant's family members. 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 December 1991 and voluntarily departed the United States in March 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions, until March 2005, when he departed the United States. 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 March 2005 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.

The AAO notes that the filing of a Form I-130 for the applicant before April 30, 2001 does not waive his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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 is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's mother or father. 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 father or mother must be established whether he or she resides in Mexico or in the United States, as they are 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 a qualifying relative in the event of relocation to Mexico. The applicant's father states that all of the applicant's family resides in the United States. *Form I-290B*. The record is not clear as to the relationship of the applicant's parent's family members to the applicant's parents or of the hardship that either would encounter without them. Going on record without supporting documentation will not meet the applicant's burden of proof in 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)). **There is no other evidence of hardship for this part of the analysis. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in**

their totality, establish that the applicant's father or mother would suffer extreme hardship upon relocation to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's father states that the applicant has no place to go and no family to count on in Mexico, and it would be very difficult for the applicant's parents and siblings to live in the United States without him. *Form I-290B*. The record does not document that a return to Mexico would create hardship for the applicant or establish that hardship to the applicant or his siblings would result in hardship to either the applicant's father or mother. Neither does it provide evidence of the difficulties that the applicant's parents would encounter without the applicant. The record lacks sufficient documentary evidence of emotional, financial, medical or any types of hardship that, in their totality, establish that the applicant's father or mother would suffer extreme hardship if either of them remained in the United States.

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 mother or father 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.