

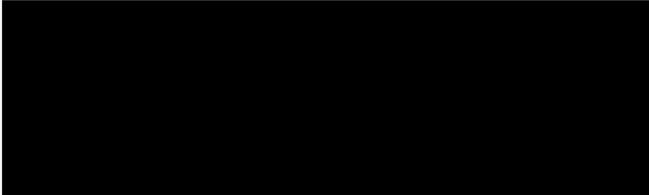
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U.S. Department of Homeland Security  
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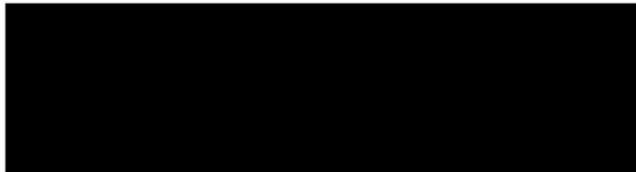
FILE: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: **JAN 08 2010**

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:



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 (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 lawful permanent resident and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In his decision, dated November 14, 2006, the district director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a result of her continued inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated December 11, 2006, counsel states that the applicant's spouse is suffering because he cannot be close to his family and his U.S. citizen children are suffering because they are not receiving the education they need.

The record indicates that the applicant entered the United States without inspection in 1990. The applicant remained in the United States until February 23, 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, the day the unlawful presence provisions were enacted until February 23, 2000, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her February 2000 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 to 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 in 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.

On appeal, counsel states that the applicant's children are suffering extreme hardship because they require special learning classes and are not able to attend these classes in Mexico. The record includes a letter from a teacher in Tijuana, Mexico stating that she teaches the applicant's son, Jose; that he needs special education; and that there is not a special education program in Tijuana. The record includes a copy of the an Individualized Education Program for the applicant's son, which was completed in the United States and a Multidisciplinary Psychological Assessment Report from the San Ysidro School District. These reports establish that the applicant's son has mild mental retardation. No reports were submitted regarding the applicant's youngest child. The AAO notes, as stated above, that hardship to the applicant's children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that hardship to the children is causing hardship to the applicant's spouse, the only qualifying relative in the applicant's waiver application.

In an undated letter, counsel states that the applicant's spouse will suffer extreme hardship if he has to raise his two children without the applicant. In addition, counsel asserts that the applicant's spouse has back pain and is suffering without the help of the applicant in performing household chores. Counsel also states that the applicant's spouse would have no meaningful source of employment if he relocates to Mexico. The record includes a copy of the applicant's spouse's worker compensation claim regarding his lower back pain. In an undated letter, the applicant's spouse states that he depends on the emotional support of the applicant and if he has to live without her he would lose all of his emotional stability.

The AAO finds that the current record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. The AAO recognizes the difficulty in raising a child with a learning disability, but the record does not establish how problems with the applicant's child are causing hardship to her spouse. 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 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). 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)). The record includes no medical documentation regarding the applicant's spouse's need for care due to his back pain. The record also does not establish that the applicant's spouse could not relocate to Mexico to be with his family or that the children could not live with him in the United States. The current record includes no documentation regarding the financial status of the applicant's family or the country conditions in Mexico (outside of their being no special education programs in Tijuana). Therefore, the AAO finds that the current record does not show that the applicant's spouse is suffering extreme hardship as a result of the applicant's continued 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.