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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**

H2



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: JAN 22 2010
CDJ 2004 768 257

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).

A handwritten signature in cursive script that reads "Perry Rhew".

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 again seeking admission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated December 4, 2007, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her continued inadmissibility. The application was denied accordingly.

On appeal, in a letter dated June 24, 2009, counsel asserts that the applicant's spouse is experiencing emotional hardship as a result of the applicant's inadmissibility. Counsel states that the applicant's two-year-old son died in Mexico in 2008 and that the family is suffering from being separated. He also contends that the applicant's spouse is suffering financially and may lose his employment because of frequently traveling to Mexico.

The record includes, but is not limited to, a birth certificate and death certificate for the applicant's son, a Texas Workers' Compensation Work Status Report, a statement from the applicant's father-in-law, two statements from the applicant's spouse, and letters from the applicant's spouse's doctors. The entire record was considered in rendering this decision.

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 record indicates that the applicant entered the United States without inspection in July 2004. The applicant remained in the United States until departing voluntarily on October 21, 2006. The applicant thus accrued unlawful presence from when she entered the United States in July 2004 until October 21, 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes 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 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 (BIA) 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. The BIA has also held:

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 relocates to Mexico and in the event that he remains in the United States, as he is not required to

reside outside 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 shows, through a death certificate submitted by counsel, that the oldest of the applicant's two children died on February 2, 2008 while residing in Mexico. The child was two years old. The applicant spouse's second child was born on June 25, 2007 in Mexico. Counsel asserts that the applicant's spouse is suffering extreme hardship because of the death of his son and his inability to have the support of his wife and child in the United States. In addition, counsel contends that it is hard for the applicant's spouse to be in Mexico with his wife and child because he could lose his employment, his only means of supporting his family.

In a statement dated December 14, 2007, the applicant's spouse states that his health is suffering in the applicant's absence. He states that he is suffering from depression and migraine headaches. He states that he suffered a work-related accident on June 4, 2002, which resulted in two surgeries to his right knee. He states that he continues to have problems with his knee and needs the applicant's support when he goes to therapy and receives treatments. The AAO notes that the record includes letters from the applicant's spouse's doctors and a workers' compensation report substantiating the claims made regarding his knee injury. The applicant's spouse also expresses his concern for the health of his children, the education of his children, and the strain supporting two households is having on his financial situation. Finally, the applicant's spouse expresses his concern about residing in Mexico, stating, "There are too many deaths in Mexico. There are too many violent people. If we were to be in Mexico for a while there would be too much drama around us. Everyday you see killings...suicides...accidents, everything."

In a letter dated December 11, 2007, the applicant's spouse's primary care physician states that the applicant's spouse suffers from situational depression, frustration, and anger due to the loss of his family. He states that the applicant's spouse is having problems concentrating at work and his financial burden has increased his stress levels. The physician states that although the applicant's spouse's current medications have been increased and his condition has improved slightly, he is not able to fully control his condition.

The AAO finds that the applicant's spouse is suffering extreme hardship as a consequence of being separated from the applicant. This hardship consists primarily of the emotional and financial hardship involved in being separated from one's spouse, coping with the death of a child, recovering from injury and providing for two households alone. The fact of this hardship is established by the statements from the applicant's spouse as corroborated by the statements from the applicant's spouse's physicians and other evidence.

The AAO finds, however, that the applicant has not met her burden in showing that her spouse would suffer extreme hardship if he relocated to Mexico. The record contains no documentation substantiating the claims made by the applicant's spouse regarding conditions he would face in Mexico, particularly in the location where the applicant resides or other locations where she and her spouse would likely reside. If the applicant's spouse relocated to Mexico, he would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting two households. The applicant's spouse would likely lose his employment if he left the

United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning her spouse’s current employment and available employment opportunities in Mexico. The applicant has also failed to explain or submit evidence showing how the applicant’s injury might affect his employment opportunities in Mexico, if at all, and how that would differ from the impact it has on his employment in the United States. Consequently, the AAO is unable to ascertain the extent to which relocation would result in financial hardship to the applicant’s spouse. The record reflects that the applicant’s spouse is a native of Mexico. He is unlikely to experience the hardships associated with adjusting to a foreign culture. He has not addressed whether he has family ties there, and the AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant’s spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant’s spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The current record does not establish that the applicant’s spouse would experience extreme hardship upon relocating to Mexico.

A review of the documentation in the record fails to establish that denial of the waiver application will result in extreme hardship to the applicant’s spouse. 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.

The AAO is acutely aware of the emotional and personal devastation the applicant’s family has suffered as a result of their current situation, particularly the loss of a child and the subsequent health problems. This is truly an unfortunate state of affairs for this family. Nothing in this decision should be taken as a suggestion otherwise. We have tried to explain the deficiencies in the record as presented, offering guidance should the petitioner file an additional claim for benefits.

ORDER: The appeal is dismissed.