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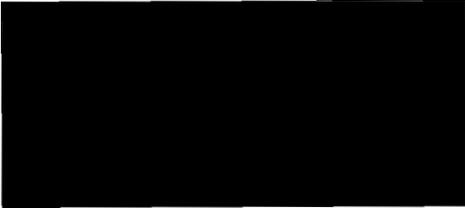
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 26 2010**
CDJ 2004 851 071 (relates)

IN RE: Applicant: [REDACTED]

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

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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 record indicates that the applicant is married to a United States citizen and is the father of two United States citizens. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), in order to reside in the United States with his United States citizen wife and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 16, 2007.

On appeal, the applicant, through counsel, claims that the applicant's wife will not only suffer "extreme hardship but exceptional and extremely unusual hardship." *Appeal Brief*, dated March 19, 2007.

The record includes, but is not limited to, counsel's appeal brief; letters from the applicant's wife, her family, and friends; and a country conditions report on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-
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 - (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.

In the present case, the record indicates that the applicant initially entered the United States in November 1996 without inspection. On March 30, 2004, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On December 2, 2004, the applicant's Form I-130 was approved. In January 2006, the applicant voluntarily departed the United States. On January 13, 2006, the applicant filed a Form I-601. On February 16, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 2006, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his January 2006 departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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.

Counsel states the applicant's wife's immediate family resides in the United States, and "[s]he does not have close relatives in Mexico." However, counsel states if the applicant's waiver is "not granted, [the applicant's wife] will have to join [the applicant] in Mexico." Counsel asserts that if the applicant's

wife joins the applicant in Mexico, she will encounter poor human rights conditions and suffer a great financial impact as she will be forced to give up her permanent employment and live in a country where she will have no job nor any connection to help her find one. The record, however, does not support counsel's claims. While the record includes a copy of the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2006, this general overview of human rights abuses in Mexico does not demonstrate how the applicant's wife would be affected by such abuses. Moreover, although the report indicates that the minimum wage in Mexico does not provide a decent standard of living for a worker and his or her family, nothing in the record establishes that the applicant's spouse would be limited to minimum wage employment. No other country conditions material is submitted to establish that the applicant's wife would be unable to obtain employment if she joined the applicant in Mexico.

In a letter dated March 15, 2007, the applicant's wife states that "[t]here is not a way possible that [she] can move to Mexico." She states that if she moved to Mexico, her children "would not receive the education they receive" now and "[she] would be risking the health care that is provided" to her sons. In a letter dated March 19, 2007, [REDACTED] states the applicant's youngest son is on breathing treatments and his oldest son has a speech delay, and is "currently seeing a speech pathologist." A second March 19, 2007 letter, written by [REDACTED] who states that she is the applicant's oldest son's teacher, also indicates that the applicant's oldest son has a speech delay. The AAO notes that, other than these statements, there is no documentation in the record, either from the speech pathologist who is treating the applicant's oldest son, or other medical professionals that establishes the extent to which the applicant's children suffer from any developmental and/or medical conditions. Additionally, while the AAO notes that the applicant's children may experience hardship in relocating to Mexico, it observes, as previously discussed, that they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act and the record does not demonstrate how any hardship they might experience would affect their mother, the only qualifying relative. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she joined him in Mexico

In addition, the record does not establish that the applicant's wife would experience extreme hardship if she remains in the United States, in close proximity to her family and maintaining her employment. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. In her March 15, 2007 letter, the applicant's wife states she has "struggled financially, as well as emotionally, to make a stable life for [their] two sons." She states that she is regularly late in paying her bills even after she borrows money from friends and family, that she lives with her parents in their mobile home and has a second job at a fast food restaurant in addition to her regular job as an assistant teacher. The applicant's wife's mother and father also state that their daughter is experiencing financial difficulties without the applicant. The record, however, does not include documentary evidence, e.g., pay stubs to establish the applicant's wife's income or documentation of her financial obligations, to support these claims. Going on record without supporting documentation is not sufficient to 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)). Further, the record fails to demonstrate, through published country

conditions reports, that the applicant is unable to contribute to his family's financial well-being from a location outside of the United States.

On appeal, counsel claims that the applicant's wife's "mental health has suffered a great impact from the separation of her husband." In letters dated March 19, 2007, the applicant's wife's parents state that their daughter is stressed and suffering from "emotional pain." The AAO notes that other than the statements from counsel and the applicant's wife's parents, the record contains no other evidence of the applicant's wife's emotional or mental status, including a psychological evaluation for the AAO to review to determine how the applicant's wife's separation from the applicant has affected her. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Based on the record before it, the AAO does not find the applicant to have established that his wife would experience extreme hardship if his waiver application were to be denied and she remained in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 wife 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.