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and Immigration
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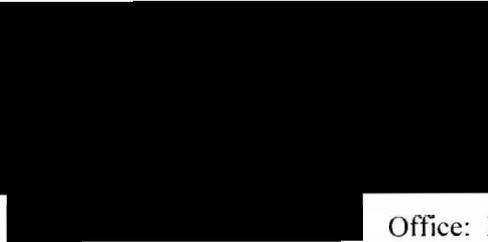
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JAN 26 2010

FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

(CDJ 2004 715 607)

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 under 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 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. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated September 14, 2006.

On appeal, the applicant states she needs to be with her spouse to assist him, as he has a medical condition. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO); Attorney's brief.*

In support of these assertions the record includes, but is not limited to, a medical statement and record for the applicant's spouse; and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering 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-

(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.

In the present case, the record indicates that the applicant entered the United States without inspection in November 1991 and voluntarily departed on January 27, 2002, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated November 22, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States on January 27, 2002. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 27, 2002 departure from the United States. The applicant is, therefore, 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 spouse must be established whether he resides in Mexico or 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.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form I-130, Petition for Alien Relative*. The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record fails to indicate whether the applicant's spouse has

familial and cultural ties in Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The AAO notes that the record includes medical records for the applicant's spouse showing diagnoses of sprains/strains sacroiliac region and discogenic syndrome. *Medical records for the applicant's spouse*, dated June 11, 2001 through April 2, 2003. The physician of the applicant's spouse notes that he has a disability precluding heavy work and a disability precluding prolonged weight bearing and sitting. *Id.* The applicant's spouse can work approximately 75 percent of the time in a standing and walking position, but must sit approximately 25 percent of the time. *Id.* He does not require active ongoing therapy or chiropractic care, and he should be considered a "Medically Qualified Injured Worker" and be eligible for vocational rehabilitation. *Statement from [REDACTED]*, dated December 2, 2002. While the AAO acknowledges the documented medical conditions of the applicant's spouse, it notes that the record does not demonstrate that relocation to Mexico would negatively affect his conditions. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form I-130, Petition for Alien Relative*. The applicant states that she needs to be with her spouse, as he cannot do any type of movement without her help, and their son is unable to provide any assistance to his father because he is working. *Form I-290B*. As previously noted, medical records for the applicant's spouse show diagnoses of sprains/strains sacroiliac region and discogenic syndrome. *Medical records for the applicant's spouse*, dated June 11, 2001 through April 2, 2003. The physician of the applicant's spouse notes that he does not require active ongoing therapy or chiropractic care, and he may be considered a "Medically Qualified Injured Worker" and undertake vocational rehabilitation. *Statement from [REDACTED]* dated December 2, 2002. The physician does not indicate that the applicant's spouse needs any type of assistance in his daily living.

The applicant's spouse states that he depends upon the applicant 70-80 percent of the time. *Statement from the applicant's spouse*, undated. While the AAO acknowledges this statement, it notes that the record fails to address or document how the applicant's spouse depends on the applicant. The applicant's spouse also states that he is supporting two households, one in the United States and one for the applicant in Mexico. *Id.* The record, however, does not include documentation, such as mortgage/bill statements, utility bills, credit card statements or money transfers to the applicant that establish the expenses of the applicant's spouse. Neither does the record demonstrate the applicant's spouse's income with earnings statements, W-2 forms, or tax statements. Furthermore, there is no documentation in the record to show that the applicant would be unable to contribute to her family's financial well-being from a place other than the United States.

The applicant's spouse states that he and the applicant have so many dreams and projects together. *Id.* The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the record fails to establish extreme hardship to the applicant's spouse, she is not eligible for a waiver of inadmissibility 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 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.