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U.S. Citizenship
and Immigration
Services

H3

FILE:

CDJ 2004 598 004

Office: CIUDAD JUAREZ, MEXICO Date: APR 01 2009

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico and 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 is the husband of a U.S. citizen, [REDACTED], and the father and stepfather of U.S. children. The applicant seeks a waiver of inadmissibility on the grounds of extreme hardship to a qualifying relative, under 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 family.

The officer in charge denied the application on finding that the applicant had failed to establish that [REDACTED] would suffer extreme hardship if the waiver application were not approved. *Decision of the Officer in Charge*, dated February 17, 2006.

On appeal, counsel contends that the record, as supplemented by the additional evidence submitted on appeal, demonstrates that the aggregate of hardship factors affecting [REDACTED] constitute extreme hardship. *Form I-290B; see also Counsel's Brief on Appeal*. Submitted on appeal with the Form I-290B and counsel's brief are: (1) a declaration from [REDACTED], dated March 21, 2006; (2) copies of identification cards, social security cards, and a birth certificate for relatives of [REDACTED] who are residing in the United States; (3) an appointment confirmation slip issued by the office of a physician, [REDACTED] to [REDACTED] on March 20, 2006; (4) a prescription form issued by [REDACTED] on March 20, 2006; (5) a transcript of courses completed by [REDACTED] at the Center for Employment Training (CET) in San Jose, California; (6) a CET Graduation Certificate issued to [REDACTED]; (7) a Certificate of Recognition issued to [REDACTED] for completion of a MEDIC First Aid® Training Program on November 4, 2005; (8) an Early Childhood Education Work Experience Certificate issued to [REDACTED] by CET on September 7, 2005; (9) a certificate issued to [REDACTED] by the California Child Care Health Project; and (10) a certificate issued to [REDACTED] in recognition of "outstanding achievement as an exemplary HOST Mentor during the 2004-2005 Academic Year . . . at Washington Elementary School."¹

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April

¹ The AAO has not considered two Spanish-language documents submitted without certified English-language translations as they do not comply with regulatory requirements. The regulation at 8 C.F.R. § 103.2(b)(3) states that any submitted document in a foreign language "shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record reflects that the applicant resided in the United States from his entry without inspection in February 2001 until his voluntary return to Mexico in April 2005. Therefore, the applicant accrued unlawful presence from the date he entered the United States until the date he departed. On November 3, 2005, the applicant applied for an immigrant visa at the American Consulate General in Juarez, Mexico. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 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.

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver

proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 alien 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 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)].

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.

It should be noted that, to demonstrate extreme hardship in the present case, the applicant must establish that [REDACTED] would suffer extreme hardship whether she relocates outside the United States to be with him, or remains in the United States without him for the remainder of the period of his inadmissibility. This is because [REDACTED] is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The AAO has noted counsel's concerns about the cases cited in the officer in charge's decision. It observes that the two cases discussed at the beginning of the decision, *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978) are relevant to the exercise of discretion rather than a determination of extreme hardship. However, although *Matter of Tin* and *Matter of Lee* are cited by officer in charge, the AAO does not find him to have relied upon them in his

consideration of extreme hardship. The AAO also notes the officer in charge's references to *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) and *Matter of W*, 9 I&N Dec. 1 (BIA 1960) but finds them to have been used by the officer in charge to define extreme hardship rather than to suggest the circumstances in these cases are similar to those in the present proceeding. Counsel also raises *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) in which the 9th Circuit Court of Appeals held that family separation due to deportation is not a personal choice and that considerable weight must be given to the hardship that will result from such separation. As the present case arises within the jurisdiction of the Ninth Circuit, separation of family will be given the appropriate weight in the assessment of hardship factors. In further response to counsel's concerns, the AAO observes that it conducts an independent, *de novo* review of all cases before it and has considered and weighed, individually and in the aggregate, all of the hardship factors presented in this record of proceeding.

To satisfy the first part of the two-part extreme hardship analysis, the applicant must demonstrate that [REDACTED] would suffer extreme hardship if she were to reside with him in Mexico.

[REDACTED] declaration submitted on appeal concentrates on the hardships that will result if she leaves the United States to join her husband in Mexico. The declaration identifies six reasons why relocation to Mexico would cause her extreme hardship. The AAO will address these reasons in the order in which they are discussed in the declaration.

The first hardship identified by [REDACTED] is the loss of the close family network that she has enjoyed in the United States and the abandonment of the cultural framework that she has known all of her life. She notes that she was born in the United States and that she has lived in the United States all of her life. She also states that she has only been to Mexico a few times, on vacations, and that she has no family there. [REDACTED] attests that her father and mother are both lawful permanent residents and have resided in the United States for over 30 years. She refers to the resident alien cards and U.S. birth certificate submitted on appeal as evidence that her parents and five of her siblings are living in the United States as lawful permanent residents and that her youngest brother is a United States citizen. She further states that she is very close to her family and has always lived near them. Moving to Mexico, she asserts, would require her to abandon this aspect of her life. [REDACTED] *Declaration of March 21, 2006*, at 1. [REDACTED] also attests that the support of her parents and sisters, with whom she has been so close, is essential if she is to deal with the depression and anxiety that she suffers because of the applicant's bar to admission. [REDACTED] *Declaration of March 21, 2006*, at 2.

As the second hardship that would result from relocation, [REDACTED] asserts that leaving the United States would undermine her ability to become a preschool teacher. She states that her training and education are not compatible with the Mexican educational system. She also states that she lacks the Spanish-language skills required to qualify to teach in the Spanish language. [REDACTED] further asserts that she has had no preparation for a career in Mexico. The record's documentation related to [REDACTED] training and coursework corroborates that she aspires to be and is working towards becoming a preschool teacher in the United States. [REDACTED] *Declaration of March 21, 2006*, at 1, 2.

The third hardship cited by [REDACTED] is her inability to continue treatment for depression if she relocates to Mexico. She states that while her separation from the applicant has resulted in anxiety and

depression, a component of her depression and anxiety is her fear about how her family will be able to provide for itself in Mexico. [REDACTED] *Declaration of March 21, 2006*, at 2. The AAO notes the symptoms that [REDACTED] describes in her declaration, as well as the two documents from [REDACTED] office, which indicate that he has seen [REDACTED] for headache and depression, and that he has prescribed fluoxetine for her sadness and anxiety. The AAO also notes [REDACTED] claim that her ability to visit with her parents and sisters is a function of their proximity inside the United States, that the family support that she enjoys in the United States would be lost if she leaves the United States, and that the loss would adversely affect her mental health. [REDACTED] asserts that in Mexico she will not be able to afford medical treatment for her depression, and that this means that she will fall deeper into depression.

The record's medical documentation does not address the cause, severity, or duration of any physical or psychological conditions that [REDACTED] is experiencing. Neither does it address the mental health consequences of [REDACTED]'s relocation to Mexico. Furthermore, the record does not document what treatment would be appropriate for [REDACTED] and does not support her assertion that she would not be able to access such treatment in Mexico. 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 fourth hardship identified by [REDACTED] is the possibility she will not be able to take her older daughter with her to Mexico for fear that, as a consequence of the administrative processes involved in moving to Mexico, her older daughter will learn that the applicant is not her true father. [REDACTED] *Declaration of March 21, 2006*, at 2.

The fifth hardship is the stress associated with [REDACTED] conviction that, if she moves to Mexico, she will be derelict in her responsibility to help her parents as they grow older. She states that her mother has recently complained of chest pain and she is worried that such pain may develop into something more serious. [REDACTED] *Declaration of March 21, 2006*, at 2.

As her sixth hardship, [REDACTED] lists the sacrifice of all the positive aspects of living as an active and contributing member of her community in the United States, and she states, "Abandoning my life in United States is an extreme hardship." [REDACTED] *Declaration of March 21, 2006*, at 3.

While the AAO acknowledges that [REDACTED] would experience hardships upon relocation, it does not find the record to demonstrate that she would suffer extreme hardship if she relocated to Mexico. [REDACTED] has stated that she is experiencing stress over how her family will provide for itself in Mexico, the possibility that her daughter will learn the applicant is not her biological father if the family relocates and her failure to live up to her responsibility to her parents if she joins her husband. However, as previously discussed, while the record indicates that [REDACTED] has been treated by a doctor for depression, it does not establish the basis for her depression or its severity. Therefore, it does not support her claim that her depression and anxiety stem, in part, from her concerns about relocation or indicate that the severity of her depression, if she relocated to Mexico, would constitute extreme emotional hardship. 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, although the AAO finds the record to establish that [REDACTED] is training to be a teacher in the United States and notes her claim that her Spanish language abilities do not qualify her to teach in Mexico, it observes that the inability to pursue a chosen career is not a basis for finding extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

The second part of the extreme hardship analysis requires the applicant to establish that [REDACTED] would suffer extreme hardship if she remains in the United States.

In her affidavit of November 7, 2005, [REDACTED] states that she is experiencing hardship as a result of the applicant's absence. She indicates that, before the applicant's departure from the United States, he provided the family's income, while she focused on caring for the children, housework, cooking, and maintaining the household. [REDACTED] also attended school part-time. [REDACTED] states that she has lost the applicant's income from the good job that he had in the United States, which was sufficient to pay all the bills and provide a good home for the family. [REDACTED] has had to stop going to school to look for a job. She asserts, however, that she has not been able to get a job because she does not have the money to get a certificate in child development. Her father is trying to support her and her daughters, but he is living on a pension which makes it impossible for him to do so. [REDACTED] also states that she has had to borrow money and is unable to buy anything for her children. [REDACTED] indicates that she is also distressed by the applicant's absence itself, as it is disrupting her marriage, fracturing the family, and separating her and her children from his love. The affidavit also indicates that [REDACTED] is stressed by witnessing the emotional pain that her daughters experience every day over the applicant's absence, and that her own distress is heightened by the absence of the emotional support that her husband would provide if he were with her. [REDACTED] states that the emotional and financial strain have been so hard on her that she has "depression and anxiety." [REDACTED] *Affidavit of November 7, 2005.*

The AAO acknowledges [REDACTED] comments about her depression and anxiety in the applicant's absence. However, as the submitted medical documentation does not establish the cause, severity, or duration of any physical or psychological conditions that [REDACTED] is experiencing, the record does not demonstrate that she is experiencing extreme emotional hardship as a result of her separation from the applicant. Further, the record does not support [REDACTED] claim of financial hardship. The applicant has not submitted documentary evidence that [REDACTED] is not employable without a child care certificate and the record lacks financial records, such as copies of bills and Federal income tax returns, which would demonstrate the severity of her financial situation.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] would face extreme hardship if the applicant's waiver application were denied. Rather, the record demonstrates that [REDACTED] would experience the distress and upheaval routinely created by the enforced absence of a spouse due to inadmissibility. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to

individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if she remains in the United States while the applicant lives outside the United States as a consequence of his inadmissibility.

As the evidence has not established that [REDACTED] would face extreme hardship if the waiver request were denied, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.