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



**U.S. Citizenship
and Immigration
Services**

H3

FILE:

[REDACTED]
CDJ1998 625 040 (relates)

Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO

Date **APR 13 2009**

IN RE:

APPLICATION:

[REDACTED]
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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), 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 10 years of his last departure from the United States. The applicant is married to a lawful permanent resident and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the record failed to establish that the hardships faced by the applicant's U.S. citizen spouse rise to the level of extreme hardship. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated April 10, 2006.

On appeal, counsel states that the applicant's spouse will experience extreme hardship as a result of his inadmissibility, she submits additional documentation of hardship, and states that the applicant should be granted a waiver as a matter of discretion. *Attachment to Form I-290B*, undated.

In the present application, the record indicates that the applicant entered the United States without inspection in January 1999. The applicant remained in the United States until June 2005. Therefore, the applicant accrued unlawful presence from when he entered the United States in January 1999 until June 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his June 2005 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 experiences or his 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 she resides in Mexico and in the event that she resides in the United States, as she 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.

The applicant's spouse states that she is suffering economic and emotional hardship. *Spouse's Statement*, dated April 23, 2006. She states that she and her two children (██████ who is five years old and ██████ who is one year and eight months old) are living with her sister-in-law and her family. She states that her sister-in-law offers economic assistance to her, but that her sister-in-law has her own family and expenses and she does not want to be a burden. She states that she and the applicant have been married for nine years and that with the applicant's job the family had medical insurance. The applicant's spouse also states that with the applicant

in Mexico they cannot count on him for economic support like they did before. She states that she cannot work because she has to care for her children and that she and her daughters travel to Mexico to see the applicant however because she is not a U.S. citizen she cannot be away from the United States for too long for fear of losing her residency. She states further that even if she were a U.S. citizen she could not relocate to Mexico because of her family ties to the United States and the lack of basic health care and education where the applicant is living in Mexico. She states that whenever she and her daughter visit the applicant in Santa Ana de Arriba, Valparaiso, Zacatecas, Mexico they become ill. The applicant's spouse states that the applicant supports her with everything and gives her strength when her father is ill and she has to care for him. *Id.*

The record includes a letter from the applicant's employer in the United States, which states that the applicant was employed by Geneva Construction Company as a laborer in their Concrete Division. *Letter from Employer*, dated April 25, 2006. The applicant's employer states that the applicant was a member of the Chicago District Laborer's Union Local #96 and if he returned to the United States he would be earning \$30.15 per hour. *Id.*

The record also includes a 2005 State Department Country Report on Human Rights Practices for Mexico, which states that the minimum wage for a worker employed in Mexico is \$4.11, which does not provide a decent standard of living for a worker and family.

The applicant's mother-in-law and father-in-law state that their daughter's life has changed drastically since the applicant had to leave the country. *Spouse's Parent's Statement*, dated April 25, 2006. They state that they feel sad and depressed because they are unable to help their daughter and that their granddaughters are beginning to miss the applicant, which is causing the applicant's spouse great sadness. They state that they are older and are ill. The applicant's mother-in-law states that she damaged her shoulder and will have eye surgery soon. The applicant's father-in-law states that he is suffering from high blood pressure and has problems with his thyroid gland. They state that their daughter is constantly checking on them. *Id.* The AAO notes that the record contains medical documentation substantiating these claims.

The record also contains a letter from the applicant's sister. The applicant's sister states that the applicant's two daughters and his spouse are currently residing with her, her husband and her two daughters. *Applicant's Sister's Statement*, dated April 25, 2006. The applicant's sister states that the applicant's spouse is going through financial instability because the applicant was always the head of their household. She states that the applicant's spouse cannot commit herself to a full-time job because she has the responsibility to care for her daughters and is constantly traveling to be with the applicant. She states that the applicant's spouse is also going through her own family's struggle because both of her parents are ill. She states that the applicant's spouse is her parent's main caretaker. *Id.*

The AAO finds that the applicant has not established that she would suffer extreme hardship as a result of the applicant's inadmissibility. The record does not indicate that the applicant would suffer extreme hardship by relocating to Mexico to be with the applicant. The record indicates that the applicant's spouse was born in Valparaiso, Zacatecas, Mexico, where the applicant is now residing. The record does not indicate that as a laborer with experience in construction the applicant could not find employment in Zacatecas, Mexico.

Furthermore, the record does not establish that the applicant's spouse's parents require the applicant's spouse's care to maintain their well-being.

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 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.