

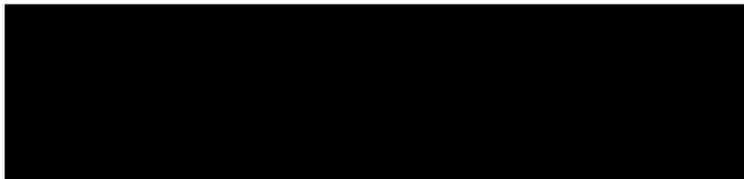
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: APR 30 2009

(CDJ 2004 640 425)

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).

John F. Grisson
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen and has two United States citizen children. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their children.

The Officer in Charge 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 Officer in Charge*, dated February 6, 2006.

On appeal, the applicant submits a statement from her United States citizen spouse detailing the hardships he is suffering and will suffer if her waiver application is denied. *Form I-290B and accompanying statement*, dated March 7, 2006.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's spouse; medical statements and records for the applicant's spouse, his mother, and his children; health insurance cards; a union membership card for the applicant's spouse; a Mexican job ad; receipts for money sent to the applicant; bank statements for the applicant and her spouse; a statement from the applicant's mother-in-law; statements from family members; earnings statements for the applicant's spouse; a utility bill, a cable bill, and an electricity bill; an airline ticket; a car insurance policy; and a property statement and apartment lease. 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 application, the record indicates that the applicant entered the United States without inspection in May 2001 and voluntarily departed the United States, returning to Mexico on April 15, 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated May 4, 2005. The applicant, therefore, accrued unlawful presence from May 2001 until she departed the United States in April 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her April 15, 2005 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 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. The plain language of the statute indicates that hardship that the applicant or her children experience upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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 travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. The record does not address what family members, if any, the applicant's spouse has in Mexico. The applicant's spouse states that at 41 years of age, he weighs 295 lbs, and suffers from diabetes and high cholesterol. *Statement from the applicant's spouse*, dated March 7, 2006. Medical records confirm that the applicant's spouse suffers from diabetes and high cholesterol. *Statement from [REDACTED]*, dated February 24, 2006; *Medical records, [REDACTED]* dated April 5, 2002. While the AAO acknowledges these health conditions, it notes that the record does not include documentation showing any course of treatment that the applicant's spouse receives for his diabetes and high cholesterol or that he would be unable to receive adequate treatment in Mexico. The record does not include published country conditions reports showing the availability or cost of healthcare in Mexico. The applicant's spouse states that he helps his siblings care for their mother who suffers from epilepsy and that he spends a lot of time with her as she just had brain surgery. *Statement from the applicant's spouse*, dated March 7, 2006. While the record establishes that the mother of the applicant's spouse underwent neurosurgery in the United States, the AAO notes that the record does not demonstrate that the applicant's spouse plays a role in her healthcare. Further, as noted by the applicant's spouse, he has siblings who also assist in her care. *Medical records for the applicant's mother; Statement from the applicant's spouse*, dated March 7, 2006. The applicant's spouse states that he contributes \$100 a month for the expenses of his mother. *Id.* He also notes that, at age 41, he is considered too old to get a job in Mexico. *Id.* In support of his assertion, he submits a Mexican job advertisement for counter and cashier positions, which requires applicants to be 20 to 35 years of age. *Classified job advertisement*. While the AAO acknowledges this documentation, it observes that counter and cashier positions are not the only types of employment in Mexico and the record does not include country conditions reports addressing the economy and availability of employment in Mexico. The record also does not include documentation showing that individuals in their 40s are unable to secure any type of employment in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). The applicant's spouse asserts that his children are sick in Mexico. *Statement from the applicant's spouse*, dated March 7, 2006. A statement from the Mexican doctor treating the applicant's son indicates that the child has repetitive symptoms of severe gastritis with signs of nervous colitis stemming from family depression syndrome or separation from his father. *Statement from [REDACTED]* undated. A letter from a doctor in Alameda, California states that the applicant's children lack consistent medical care in Mexico as they are not up to date with their immunizations and that their care would be better in the United States. *Statements from [REDACTED]*, dated November 24, 2005 and February 23, 2006. The AAO notes, however, that the applicant's children are not qualifying relatives for the purposes of this case and the record fails to document how the hardships the applicant's children encounter in Mexico affect the applicant's spouse, the only qualifying relative in this case. Furthermore, although the applicant's spouse asserts that his children may die in Mexico from lack of medical care, medical documentation in the record shows that the applicant's son is being treated in Mexico for his medical problems and there is no documentation that the applicant's children cannot receive immunization shots in Mexico. *Statement from [REDACTED]* undated.

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 Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. The applicant's spouse states that he will not live beyond 50 years of age if the applicant is not in the United States to help him with his depression, stress, and diet. *Statement from the applicant's spouse*, dated March 7, 2006. The record includes a statement from the physician of the applicant's spouse noting that he is depressed and needs his family. *Statement from [REDACTED]*, dated February 24, 2006. While the AAO acknowledges this claim, it notes that the applicant's spouse's physician fails to indicate the causes of the applicant's spouse's depression, its severity or what type of treatment, if any, he may be receiving. The physician also fails to state, in her professional opinion, how the applicant's spouse would be affected psychologically if he continues to be separated from the applicant. The applicant's spouse sends money to the applicant in Mexico. *Bank statements for the applicant's spouse; Money remittances*. The record includes various bill statements. *See utility, cable, and electricity bills*. The applicant's spouse also indicates that he contributes \$100 a month towards his mother's expenses, as she recently had neurosurgery. *Statement from the applicant's spouse*, dated March 7, 2006. While the AAO acknowledges these expenses, it does not find the record to establish that meeting them constitutes an extreme hardship for the applicant's spouse. Moreover, it notes that there is nothing in the record to demonstrate that the applicant would be unable to contribute to her family's financial well-being from a place other than the United States.

While the AAO acknowledges the difficulties faced by the applicant's spouse, U.S. court decisions have repeatedly held that the common results of removal 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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 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.