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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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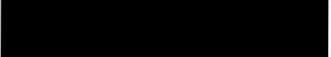
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FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ, MEXICO)

Date: APR 30 2009

(CDJ 2005 729 344)

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. Grissom

Acting 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 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 married to a United States citizen and is the father of two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director, dated December 10, 2007.*

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B.*

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a student loan statement for the applicant's spouse; and a medical statement and records for the applicant's children. 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 1998 and voluntarily departed the United States, returning to Mexico in February 2006. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated February 16, 2007. The applicant, therefore, accrued unlawful presence from 1998 until he departed the United States in February 2006.¹ In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 2006 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 his children would experience upon removal is not directly relevant to the determination as to whether he 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 she resides in Mexico or the United States, as she 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.

¹ The AAO observes that the District Director found that the applicant accrued unlawful presence from 1998 until February 2006 and from April 1, 1997 until December 2005. *Decision of the District Director*, dated December 10, 2007. The District Director erred in finding that the applicant accrued unlawful presence from April 1, 1997 until December 2005.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States and her family lives in the United States. *Approved Form I-130, Petition for Alien Relative; Statement from the applicant's spouse*, dated January 29, 2007. The applicant's three-month-old child has a congenital heart defect which prevents her from traveling to Mexico. *Statement from [REDACTED], Cardiology Service, Texas Children's Health Center – Sugar Land*, dated January 8, 2008. Although this condition is stable at this time, it is possible that the applicant's child will require surgical intervention or open-heart surgery. *Id.* Traveling outside of the United States is not recommended. *Id.* Additionally, the applicant's other child has a history of dental problems and was scheduled for out-patient dental surgery on February 22, 2007. *Out-patient dental surgery appointment, UT Pediatric Dentistry, Hermann Hospital*, undated. While the applicant's children are not qualifying relatives for the purposes of this case, the AAO will analyze hardship to the applicant's children as it directly affects the applicant's spouse, the only qualifying relative in this case. While the record does not include published country conditions documentation regarding the availability of adequate healthcare and treatment in Mexico, the AAO notes that a physician has recommended that the applicant's three-month-old child not be taken outside the United States. The AAO acknowledges that, due to the newborn age of the child, it would be a hardship to separate this child from the applicant's spouse should the applicant's spouse reside in Mexico. When looking at the aforementioned factors, particularly the travel restriction placed upon the applicant's newborn child by a licensed healthcare professional, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she 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 was born in the United States. *Approved Form I-130, Petition for Alien Relative; Statement from the applicant's spouse*, dated January 29, 2007. The applicant's spouse states that being separated from the applicant has been a huge financial burden. *Statement from the applicant's spouse*, dated January 29, 2007. She notes that as a result of the applicant's inadmissibility she is no longer able to hold a regular job. To be able to visit the applicant, she is forced to clean houses for a living. *Id.* The record, however, does not include documentation to show that the applicant would be unable to obtain employment in Mexico and contribute to his family's financial well-being from outside the United States. The record does not include any published country conditions reports documenting the economy and employment opportunities 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 states that she cannot imagine raising two children alone as a single parent with only occasional visits to see the applicant. *Statement from the applicant's spouse*, dated January 29, 2007. While the AAO acknowledges the difficulties of being a single parent, it notes that the applicant's spouse has the support of family in the United States. The AAO notes that the applicant's siblings as well as the family of the applicant's spouse live in the United States, and the applicant's spouse lives at her parent's house. *Statement from the applicant's spouse*, dated January 29, 2007. Although, as previously noted, the applicant's newborn child has a congenital heart defect, the record does not establish the nature of that defect and the child's physician specifically states that her condition is stable at this time. *Statement from [REDACTED] Cardiology*

Service, Texas Children's Health Center – Sugar Land, dated January 8, 2008. The AAO acknowledges that additional responsibilities may arise when caring for a sick child. However, the statement from the child's physician does not indicate that she needs any care that would add to the responsibilities of the applicant's spouse.

The applicant's spouse states that the emotional toll of not being with the applicant has been tremendous. *Statement from the applicant's spouse*, dated January 29, 2007. The applicant's spouse misses the applicant so much every day. *Id.* While the AAO acknowledges these emotions, 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. The AAO recognizes that the applicant's spouse will endure emotional hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she 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 his spouse if she were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative if she remains in the United States, the applicant 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 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.