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



U.S. Citizenship
and Immigration
Services

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H3

FILE: [REDACTED] Office: CUIDAD JUAREZ

Date:

JUL 28 2009

IN RE: [REDACTED]

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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 ten years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in October 1998. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In his decision, dated June 26, 2006, the OIC found that the applicant failed to establish that her qualifying relative would suffer extreme hardship as a result of her continued inadmissibility. The application was denied accordingly.

In a brief on appeal, dated August 23, 2006, counsel states that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility and the applicant's good moral character merits a favorable exercise of discretion.

The record indicates that in October 1998, the applicant entered the United States by having a smuggler present another person's humanitarian parole document on her behalf. The applicant then remained in the United States until January 2003. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant has also accrued unlawful presence from when her stay under the humanitarian parole document expired in 1998 until January 2003, the date of her departure from the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2003 departure from the United States. Therefore, the applicant is also 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)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are 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 or her children experience due to separation is not considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings unless it causes hardship to the applicant’s qualifying 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 he resides in Mexico and in the event that he resides in the United States, as he 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.

In a declaration, dated July 21, 2006, the applicant's spouse states that what his family is going through is causing him psychological, emotional and economic stress. He states that he travels to Mexico to be with his family whenever he can, spending just as much time in Mexico as he is now spending in the United States. He states that being separated from the applicant and his children makes him sick and has caused great emotional and financial hardship to his family. The applicant's spouse states that he is suffering from depression, nervousness, desperation, and insomnia. He states that he is currently under psychological treatment and is taking medication. He states that he receives medical care in Mexico because he cannot afford treatment in the United States. He states that because of his travel back and forth to Mexico he is not able to keep a permanent job in the United States and has to work temporary jobs out of an employment agency.

In this declaration, the applicant's spouse also states that he and the applicant are worried about the future wellbeing of their children. He states that he fears his children will not have the same educational opportunities as they would have in the United States and that his son is having a very difficult time adapting to a new school system in a different language. The record also contains a psychological evaluation from [REDACTED], dated July 12, 2006 and medical notes for the applicant's son in Spanish with no certified translations attached. The evaluation was conducted on the applicant's children in Mexico and concludes that the applicant's children are having behavioral problems as a result of the absence of their father. The AAO notes that, as stated above, hardship the applicant's children experience due to separation is not considered in section

212(a)(9)(B)(v) and section 212(i) waiver proceedings unless it is shown that this hardship is causing hardship to the applicant's qualifying relative.

The record also contains medical documentation related to the applicant's spouse. In a letter, dated July 18, 2006, [REDACTED] states that in May 2003 the applicant's spouse came to his office and was diagnosed with the following: recurring chronic depression, extreme personality anxiety, psycho-physiological traumas (migraines and high digestive track alterations), and severe psychosocial stress. [REDACTED] lists the following treatments for the applicant's spouse's condition: individual psychotherapy, couples psychotherapy, and psycho-pharmaceuticals. In his letter, he lists all the prescriptions written for the applicant. He states that the applicant was scheduled for a follow-up appointment on June 5, 2003 where his condition was re-evaluated and he was kept on the same prescriptions and scheduled for other appointment in six months. [REDACTED] states that the applicant did not come to his last follow-up appointment for economic and employment reasons.

The record includes a radiology and imaging report for the applicant's spouse translated into English but containing technical language and medical jargon largely incomprehensible to those not in the medical field. Without an accompanying explanation, it can be given little probative weight for this proceeding.

The AAO notes that the record of hardship also includes documentation showing that the applicant's spouse has been sending money to his family in Mexico since August 2003, photographs of the applicant and her family, and eight letters from family and friends in the United States attesting to the hardship the applicant's spouse is facing because of being separated from the applicant. These letters also reflect that the applicant's spouse is suffering as a result of seeing the problems his son is having adjusting to school in Mexico.

The AAO finds that the record does not show that the applicant's spouse would suffer extreme hardship upon relocation to Mexico. The record indicates that the applicant's spouse is living in Mexico half of the time, receives medical treatment in Mexico, and does not have permanent employment in the United States. The record also shows that the applicant's son is having behavioral problems due to his father's absence and that the applicant suffers emotionally from being separated from his family. The record fails to show that these issues would not be remedied by the applicant relocating to Mexico full-time. The record does not show that the applicant would have problems finding employment and residing with his family. Thus, the AAO cannot find that the applicant would experience extreme hardship as a result of the applicant's inadmissibility.

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 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.