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

Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



H3

FILE: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: JUN 08 2009
CDJ2000 850 130 (RELATES)

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 District Director, Mexico City (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 her last departure from the United States. The applicant is married to a lawful permanent resident and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The district director found that the record failed to establish extreme hardship to a qualifying relative as a result of her continued inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated April 28, 2006.

On appeal, counsel submits additional evidence of hardship to the applicant's spouse as a result of the applicant's inadmissibility. *Attachment to Form I-290B*, dated May 24, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in June 1995. The applicant remained in the United States until June 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until June 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her 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 or her 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 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.

The record includes a psychological assessment of the applicant's spouse by [REDACTED], a Licensed Professional Counselor. [REDACTED] states that the applicant and her spouse are living

apart because of the applicant's immigration status and that the applicant's spouse finds it extremely difficult to support the applicant and their children. *Psychological Assessment*, dated May 18, 2006. She states that the applicant's spouse has been experiencing a great amount of distress and he seems sad when he tells the story of his family. She also states that the separation is having a great impact on the applicant's spouse because it is devastating the basic principles he has always followed by his not being able to fulfill his moral obligations to his wife and children. [REDACTED] states that the applicant's spouse needs to feel the closeness of his family and the separation is causing him emotional and financial hardship. Finally, [REDACTED] cites to the Universal Declaration of Human Rights and states that it is of great importance to maintain the principles of the family unit as a human right. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the issues the applicant's spouse is facing. Moreover, the conclusions reached in the submitted report do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the assessments value in determining extreme hardship.

The record also contains two letters from the applicant's spouse, both undated and containing similar information. The applicant's spouse states that he moved his wife and two children from North Dakota to Michoacan, Mexico where his spouse's family lives, but that his wife and children constantly became ill in Mexico and his oldest son was unable to enroll in school. *Letter from Applicant*. He states that he could not take the pain of being away from his family, so he moved them to the border city of Reynosa, Mexico on the border with Hidalgo, Texas. The applicant's spouse states that his youngest son now requires surgery. *Id.* The AAO notes that no documentation was submitted to establish that the applicant's son requires surgery, what the nature of the surgery would be, and how this surgery would affect the applicant's spouse in light of the applicant's inadmissibility. The applicant's spouse also states that he has been suffering economically, after selling two cars and spending all of his savings (\$13,500). *Letter from Applicant*. He states that he feels very depressed and would like to get his family out of this situation. He states that because he has run out of money he must return to North Dakota so that he does not lose his job. *Id.*

In support of the applicant's spouse's statements regarding the financial hardship he is suffering, counsel submits financial records. The record includes documentation showing that the applicant's spouse owns a subdivision of land in Hidalgo County, Texas. Also included in the record are receipts from bus trips to Mexico, bank withdrawal receipts, bank statements, and a document counsel states shows the applicant's spouse took out a \$400 consumer loan to help with his family's expenses. The AAO notes that the bank statements show that the applicant's spouse's checking account has decreased. For example, the bank statement from October and November 2005 shows an ending balance of \$1,371.80, the statement from December 2005 and January 2006 shows an ending balance of \$1,517.84, and the February 2006 bank statement shows an ending balance of \$147.72. The AAO notes that this documentation does not conclusively establish that the applicant's spouse is suffering financial hardship because the record does not indicate that the applicant's spouse is unable to find employment and earn more income in Texas. Furthermore, the record indicates that the

applicant's spouse owns land in Hidalgo County, Texas and the record contains no such evidence of ties to North Dakota, with the exception of a letter from the applicant's spouse's employer.

A letter from the applicant's spouse's cousin was also submitted as part of the record. The applicant's spouse's cousin, [REDACTED], states that she has witnessed a radical change in her cousin since being separated from the applicant. *Letter from Cousin*, undated. She states that he has fallen into a deep hole of depression and anguish. *Id.*

The record also contains four letters from friends and family members in support of the statements made by the applicant's spouse.

The applicant's spouse's employer states that he is concerned they will lose one of their key employees. *Letter from [REDACTED]*, dated May 12, 2006. The applicant's spouse's employer states that this past year they shipped bees from North Dakota to California, California to Texas, California to North Dakota and Texas to North Dakota. He states that the applicant's spouse is the only driver the company has with a Class "A" license, so the company has a truck and trailer that cannot be used by anyone but the applicant's spouse. He states that the applicant's spouse also works as a mechanic for their company. *Id.*

The record also contains a 2004 State Department Country Report on Human Rights Practices in Mexico, documentation showing the applicant's spouse's relatives in the United States, medical laboratory results showing that the applicant's spouse is a diabetic and has high blood sugar, photographs of the applicant's family, and school records for the applicant's children.

The AAO notes that although the applicant submits documentation to show that her spouse is suffering hardship as a result of her inadmissibility, this documentation fails to show that the hardship claimed rises to the level of extreme. For example, the record contains documentation that the applicant's spouse is a truck driver in North Dakota, but does not show that he would be unable to find employment in Texas or in Mexico as a truck driver. The record shows that the applicant's spouse is a diabetic and has high blood sugar, but fails to show how these conditions are exacerbated by the applicant's inadmissibility. The record also states that the applicant's spouse is suffering emotionally, but does not describe how this suffering is affecting his ability to function on a daily basis. Finally, the applicant submits country condition information for Mexico, but fails to indicate how this documentation relates to his family's circumstances.

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.