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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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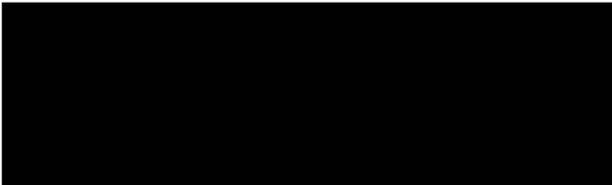
Date: JUN 08 2009

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 his last departure from the United States. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the record failed to establish that his U.S. citizen spouse would suffer extreme hardship as a result of his continued inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated August 11, 2006.

On appeal, counsel states that the district director's decision failed to meaningfully analyze all hardship factors. *Counsel's Brief*, dated October 6, 2006. Counsel states that the district director's decision includes many legal citations, but lacks any specific application of these legal standards to the applicant's case despite the submission of hardship documentation. Counsel also states that since the interview at the consulate in October 2005 the applicant's spouse has given birth to a second child and she has been forced to move in with her mother because she can not afford housing of her own without the applicant. *Id.*

The record indicates that the applicant entered the United States without inspection in 1997. The applicant remained in the United States until October 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act or if he entered the United States after April 1, 1997, from when he entered the United States until October 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his October 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.

In a statement submitted with the initial waiver application, the applicant's spouse states that she is going to have emotional and financial problems if the applicant is not granted a waiver. *Spouse's Declaration*, dated October 17, 2005. She states that the applicant earns \$24,000 to \$25,000 per year and that she depends on the applicant's income to pay the majority of their expenses. She states that she earns \$3,500 to \$4,000 per year. She states that they are currently renting an apartment, which costs about \$500 per month, they also pay \$388.80 for a car loan and \$150 for car insurance. The applicant's spouse states that she is afraid she will have to choose between meeting her financial obligations and providing for her family, as she does not work fulltime because she is pregnant. She states that with her future being unknown and being five months pregnant, her state of mind and loss of physical energy have made her very depressed. She also states that she was hospitalized twice for having problems with her pregnancy and was told that she needed to rest or she would risk having a miscarriage. She states that her situation is causing her a lot of stress and to see her daughter suffer the loss of her father would cause her great distress. She states that she never wanted to be a single mother and it would be extremely difficult to care for two small children and work full time. The applicant's spouse states that although her mother and brothers live in the United States they cannot help her financially. She states that she and the applicant are the ones that help support them. The applicant's spouse states further that in Mexico the applicant would not have a house or any prospects for employment, so he would not be able to support the family. She states that in Mexico there are only jobs that offer poor pay and hard labor. She states that she and the children would not be able to join the applicant in Mexico because of the poor economy and the better opportunities her children would have in the United States as compared to Mexico. Finally, she states that she will suffer if her family is split apart, that she needs the applicant in the United States not only for when their baby is born, but also after labor. *Id.*

In a statement submitted on appeal, the applicant's spouse states that since the applicant's interview the applicant's son was born and is now seven months old. *Spouse's Declaration*, dated October 6, 2006. She states that because she cannot leave her job or afford to travel to Mexico, the applicant has not met his son. In addition, the applicant's spouse states that her son was born with a problem affecting one of his tear ducts and was told by his doctor, [REDACTED], that he needed an operation to fix the problem. The applicant's spouse states that [REDACTED] wrote her a brief letter about her son's condition, but she has been trying to obtain more information from his office. She also states that it is her understanding that [REDACTED] offices are closed because he is being sued because a child he treated died. She states that she cannot take her son to Mexico because she has no means to have the surgery done outside the United States.

The applicant's spouse states that she has a support system in the United States that she would not have in Mexico. She states that her mother, who is a lawful permanent resident, helps her with her children in the applicant's absence. She states that she works at Walmart and earns about \$600 every two weeks and she and her children now live with her mother in a cramped quarters because she cannot afford to rent a space on her own. The applicant's spouse again asserts her fears regarding relocation to Mexico, stating that she and the applicant have no jobs there and she would fear for her children's well being. *Id.*

The AAO notes that the record includes a letter from [REDACTED]. The letter is undated and not on an official letterhead. It states that the applicant's son, [REDACTED], has been his patient since birth and has a blocked "tear canal". *Letter from [REDACTED]* undated.

The record also includes financial documents showing monthly bills that were submitted with the initial waiver application, photographs of the applicant and his family, and various letters of recommendation from the applicant's former employers and from the applicant's church.

The AAO notes that the current record lacks sufficient documentation to establish extreme hardship in the applicant's case. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel does not submit documentation to substantiate the applicant's spouse's claims regarding her employment and her having to move into her mother's small apartment. In addition, the AAO notes that no country conditions information was submitted to support the assertions regarding conditions in Mexico. Moreover, the AAO recognizes the difficult situation the applicant's spouse is in with regards to her son's doctor's office, however, in order for her son's surgery to be considered in the hardship analysis of the applicant's case, more detailed documentation must be submitted.

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.