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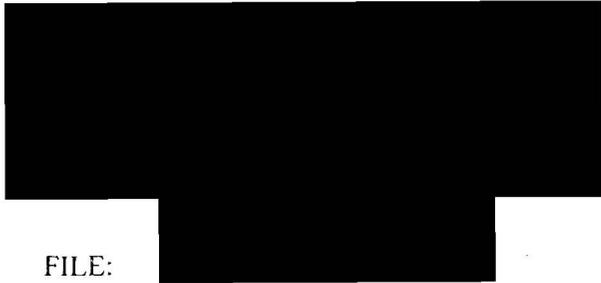


U.S. Citizenship  
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**MAR 03 2009**



FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

CDJ 1997 695 253

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 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 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 U.S. lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The officer in charge found that, based on the evidence in the record, the applicant had failed to establish that a qualifying relative would undergo extreme hardship as a result of her continued inadmissibility.<sup>1</sup> The application was denied accordingly. *Decision of the Officer in Charge*, dated April 10, 2006.

On appeal, counsel states that the applicant worked to help her spouse to pay the mortgage on the family home prior to her departure and now the applicant's spouse is in danger of losing that home because he does not have the income from his wife. Counsel also contends that the prospective loss of one's home due to inability to pay the note is extreme hardship. *Counsel's Brief*, dated June 1, 2006.

In the present matter, the record indicates that the applicant entered the United States without inspection on June 29, 1999. The applicant remained in the United States until June 2005. Therefore, the applicant accrued unlawful presence from June 29, 1999 until June 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten 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

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<sup>1</sup> Counsel notes that the officer in charge's decision referenced *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), both of which relate to the exercise of discretion rather than the determination of extreme hardship. The AAO acknowledges counsel's observation, but does not find the officer in charge to have relied on these precedent decisions in determining extreme hardship.

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 due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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 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.

Counsel submits a brief on appeal in which he notes that the applicant's spouse has submitted evidence that, prior to her departure for Mexico, the applicant worked to help pay the mortgage on the family home and that, without her income, her spouse is in danger of losing the home he has worked very hard to acquire. Counsel contends that the prospective loss of one's home due to inability to pay the note is extreme hardship, and that it is not a hardship that is a normal result of separation.

It is noted that the record contains two letters from the applicant's spouse. However, the letters are in Spanish without English translation and thus, do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which provides that any document in a foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) must be accompanied by a full English-language translation. Accordingly, the AAO will not consider the letters written by the applicant's spouse as evidence in this proceeding.

The record contains a range of income, mortgage and utility statements in support of counsel's assertion that the applicant's spouse is suffering economic hardship. The pay stubs for 2005 in the record show that the applicant's spouse worked for [REDACTED] and was paid at rate of \$7.10 per regular hour and \$10.65 per overtime hour, and that his year-to-date earnings as of December 7, 2005 totaled \$20,455.35. The documents in the record also show that on March 21, 2005, the applicant's spouse acquired a mortgage loan of \$158,415.76 at 8.502% rate with monthly payment of \$1,104.40 beginning May 1, 2005 and a second loan of \$41,055.31 at 11.389% with monthly payment of \$403.08 beginning May 1, 2005 from [REDACTED]. The record also contains a copy of the spouse's mortgage statement for April 2006 which shows that he had a current balance of \$1,104.40 and also a past due balance of \$1,104.40, indicating that the applicant's spouse did not pay the monthly mortgage payment for March 2006.

Economic hardship faced by the applicant's spouse is relevant in determining whether extreme hardship exists. However, while the AAO acknowledges that the applicant's spouse will face financial difficulty in paying a monthly mortgage of \$1,500 on his annual income of \$20,000, the record does not contain any documentary evidence to demonstrate that the applicant was employed while in the United States or her income was used to meet the family's mortgage payment. Neither does the record contain documentation, e.g., published country conditions reports, showing that the applicant is unable to find a job and earn sufficient income to assist her spouse financially from outside the United States. Moreover, in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), the Board of Immigration Appeals held that economic detriment in the absence of other substantial equities is not extreme hardship (citing *Matter of Sangster*, 11 I&N Dec. 309 (BIA 1965)); see also, e.g., *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986); *Bueno-Carrillo v. Landon*, 682 F.2d 143 (7th Cir. 1982); *Carnalla-Munoz v. United States INS*, 627 F.2d 1004 (9th Cir. 1980). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, supra; *Santana-Figueroa v. INS*, 644 F.2d 1354 (9th Cir. 1981). Having carefully considered the record, the AAO concludes that the applicant in this case has failed to establish extreme hardship to her

spouse in the event that he remains in the United States following the denial of her waiver application.

The AAO also notes that the issue of relocation and its impact on the applicant's spouse is not addressed in the record. Accordingly, the AAO is unable to find that the applicant's spouse would suffer extreme hardship if he relocated outside the United States with the applicant.

In the final analysis, the AAO finds that the applicant has failed to establish that her spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(a)(9)(B) of the Act, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.