

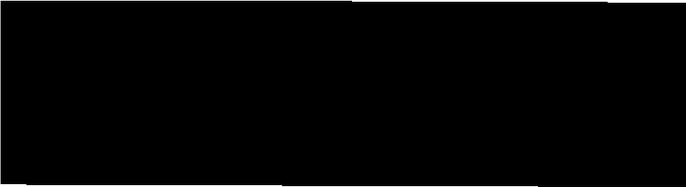
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U.S. Citizenship  
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**MAR 03 2009**

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

CDJ 2004 590 147

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 naturalized U.S. citizen. 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. The application was denied accordingly. *Decision of the Officer in Charge*, dated March 22, 2006.

Counsel asserts that with the submission of new documents on appeal the applicant has established that her U.S. citizen spouse will suffer extremely from the separation from his family. Counsel also contends that the financial impact on the applicant's spouse will be great if he relocates to Mexico with the applicant. *Form I-290B*, dated April 19, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in 1995. The applicant remained in the United States until April 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until April 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her April 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 other relatives experience 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 states that the applicant's spouse has no ties with Mexico, that all his family members live in the United States, and that he does not have a job or a prospective job in Mexico. Counsel states that the applicant's spouse's U.S. citizen children will have a better education and quality

of life in the United States than Mexico. Counsel also asserts that the applicant's spouse has property, two houses and two cars, in the United States and, therefore, that relocation to Mexico will have a great financial impact on him.

Economic hardship faced by the applicant's spouse is relevant in determining whether extreme hardship exists. Counsel asserts that the applicant's spouse would lose two houses if he moved to Mexico. However, while the record supports the existence of the two properties, it fails to establish that a move to Mexico would result in their loss. One of the houses is co-owned with the spouse's parents and the record does not indicate that they would be unable to assume financial responsibility for the mortgage in the spouse's absence, thus allowing him to retain this property. The record also fails to document, e.g., through published country conditions reports on the Mexican economy, that the applicant and her spouse would be unable to obtain employment in Mexico and, thereby, with the aforementioned financial assistance of the applicant's spouse's parents, continue to make the payments on their properties from outside the United States. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

In an April 17, 2006 interview with [REDACTED], a licensed professional counselor in Austin, Texas, the applicant's spouse stated that his elder son has been diagnosed with ADHD and is presently taking the medication, "Strattera," and that his younger son has a brain disorder, which is described as a "fever crisis focused on the left side of the temporal frontal lobe," for which he is taking "Criam," an anti-convulsive medication. He worries about whether they are getting the best health care in Mexico. The AAO notes these claims, but does not find the record to support them. The only medical documentation in the record regarding the health of the applicant's children is found in letters from [REDACTED] in Mexico, which are dated October 31, 2005. In his letters, [REDACTED] states that the applicant's elder son presents gastro-intestinal problems, a recurrence of faringo-tonsillitis and emotional problems related to his father's absence. [REDACTED] reports that the applicant's younger son has a recurrent allergy caused by the large quantities of dust in the region, recurrent faringo-tonsillitis and shows irritability.

The AAO notes that the applicant's children are not qualifying relatives and thus hardship they experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. Further, while the record contains no documentary evidence to establish that the applicant's children are unable to obtain adequate health care in Mexico, the fact that medical facilities in an applicant's homeland may not be as good as they are in the United States does not establish extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The AAO also observes that the record does not include birth certificates for the applicant's children and, therefore, fails to demonstrate their U.S. citizenship or their relationship to the applicant and her spouse. Simply 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)).

For the reasons previously noted, the AAO does not find sufficient evidence in the record to establish that the applicant's spouse would suffer extreme hardship if he relocated to Mexico with the applicant.

Counsel also contends that the applicant's spouse has been suffering and will continue to suffer extreme hardship if he remains in the United States. Counsel states that the applicant's spouse suffers extremely from the separation from his family. In support of this claim, counsel submits the previously referenced evaluation from [REDACTED] Ms. [REDACTED] notes that the applicant's spouse appears to be emotionally and psychologically distressed and to be very worried and anxious about his family because they are not in the United States. Ms. [REDACTED] concludes that the applicant's spouse's mental and emotional stability is at risk. Although the opinion of any mental health professional is respected and valuable, the AAO finds the evaluation's conclusions, as they are based on a single interview, to be speculative and, therefore, of little evidentiary value in determining extreme hardship. The AAO also notes that the evaluation fails to offer a clinical diagnosis of the spouse's mental health or to recommend a course of treatment to be followed by the applicant's spouse.

The AAO is mindful of and sensitive to the applicant and her spouse's concerns about maintaining their family and the hardship the applicant's spouse will endure if separated. However, it does not find the record to contain evidence that distinguishes the applicant's spouse's situation, if he remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). In addition, the record reflects that the applicant's spouse has close family in the United States, including his both parents and a brother, who may be able to provide him with emotional support. Having carefully considered the hardship factors, both individually and in the aggregate, it is concluded that the record does not establish extreme hardship to the applicant's spouse in the event that he remains in the United States.

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



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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.