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U.S. Citizenship
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Services

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FILE



CDJ 2004 640 289

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

MAR 03 2009
Date:

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:

SELF-REPRESENTED

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 District Director, Mexico City, 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 husband.

The district director 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 District Director*, dated April 10, 2006.

On appeal, the applicant's spouse states that the applicant's departure has been affecting him enormously, not only emotionally, but mentally, physically and economically. He also states that if his wife is not allowed to come to the United States, it will not take long for him to become a very sick and depressed person, to be hospitalized and become a public charge. *Spouse's Affidavit*, dated April 18, 2006.

In the present matter, the record indicates that the applicant entered the United States without inspection in August 1998. The applicant remained in the United States until April 2005. Therefore, the applicant accrued unlawful presence from August 1998 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 her 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.

On appeal, the applicant's spouse submits a statement dated April 18, 2006. In this statement, he asserts that he will suffer extreme hardship if the applicant is not allowed to enter the United States.

He states that the emotional support they provided each other was an essential part of their lives; that they were hard working and good, moral individuals forming a great team; that they were establishing a devotional life together; and they were dreaming and planning to have children. He also states that, as his wife is not with him, all of these are in a great danger of being broken and destroyed.

The applicant's spouse asserts that he suffers and will suffer mental and physical hardship in the applicant's absence. He states that without the applicant, he has reduced the number of hours in the math center where he helps students, does not have the motivation or the energy to go to the gym or to coach or play soccer or any sport, and that many of his fellow teachers have asked him whether he is sick. The applicant's spouse asserts that since his wife left for Mexico a year ago, he has been tremendously depressed and his health has been negatively affected. He states that he has experienced low energy levels, lack of motivation, fatigue and loss of interest in his favorite activities, sleep problems at night and is unable to concentrate on his job. While the AAO notes these claims, the record does not contain any documentary evidence to support them. Going on record without documentary evidence will not meet the applicant's burden of proof in this proceeding. *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)).

The applicant's spouse asserts that he is suffering extreme physical hardship as result of his wife's inadmissibility. He states that when he was in Mexico in December 2005, he got sick and went to see a doctor. He states that his medical tests showed low levels of VLDL, hemoglobin, hematocrites, and uric acid. It is noted that the record contains some medical records for the applicant's spouse including results of diagnostic tests conducted on December 27, 2005 by a Mexican laboratory and a copy of prescription from a medical doctor at the University of Guadalajara dated December 24, 2005. The record, however, fails to provide a letter from a licensed health care provider interpreting the test results submitted by the applicant or evaluating the health of the applicant's spouse.

The applicant's spouse asserts that besides being affected emotionally, mentally and physically, his financial situation has also been affected as a result of the applicant's inadmissibility. He states that he has a house and three cars for which he pays the mortgage and insurance respectively. He states that, in addition, he has to send money to the applicant in Mexico. He asserts that because of these financial commitments, he has financial needs that he cannot afford anymore. The AAO notes that the economic hardship faced by the applicant's spouse is relevant in determining whether extreme hardship exists, but finds that the record does not contain any documentary evidence showing the applicant's spouse's income or his living expenses. Nor does the record contain documentation showing that the applicant is unable to find a job and earn sufficient income to support herself or financially assist her spouse from outside the United States.

The AAO is mindful of and sensitive to the applicant's spouse's concerns about maintaining his family and the hardship the applicant's spouse will endure as a result of separation. 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). Having carefully considered the hardship factors, individually and in the aggregate, the AAO concludes that the record does not establish extreme hardship to the applicant's spouse in the event that he remains in the United States following a denial of the applicant's 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 in admissibility 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.