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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

HB

APR 05 2010

FILE:

[REDACTED]
(CDJ 2004 698 123)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

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).


Perry Rhew

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 his last departure from the United States. The applicant's spouse and three stepchildren (children) are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated December 11, 2006.

On appeal, the applicant's spouse states that she is appealing the case due to financial difficulties, her health and concern for her daughter who is suffering. *Form I-290B*, received December 29, 2006.

The record includes, but is not limited to, a physician's letter for the applicant's spouse, the applicant's spouse's prescription records, tax returns for the applicant and his spouse, financial records for the applicant's spouse, and statements from the applicant's spouse, daughter and brother-in-law. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in January 1994 and departed the United States in December 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until December 2005, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his December 2005 departure from the United States.

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 or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen spouse or parent in this country, the qualifying relative's family ties outside the United States, the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries, the financial impact of departure from this country, and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or 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 first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. The applicant's daughter states that she does not want to leave her school or friends. *Applicant's Daughter's Statement*, at 1, dated December 22, 2006. The record does not include evidence of how any hardship that might be encountered by the applicant's daughter upon relocation would affect her mother, the only qualifying relative.

The record reflects that the applicant's spouse suffers from depressive disorder, she is under a doctor's care, she is on medication, she has had problems being able to work and she has been advised not to work. *Letter from* [REDACTED], dated December 5, 2006. However, the letter does not discuss whether the applicant's spouse would continue to have these problems if she

resided in Mexico with the applicant. The record reflects that the applicant's spouse is the sole managing conservator of her two sons from a prior marriage and her ex-spouse is the possessory conservator. *Applicant's Spouse's Divorce Decree*, at 2, dated July 17, 2001. However, the applicant's spouse does not claim that she would be unable to take her sons with her to Mexico due to the terms of her divorce decree. The record fails to address any other potential impacts of relocation on the applicant's spouse. Accordingly, it lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that the applicant was the family's provider, she was advised not to work due to her severe depression and their daughter dearly misses him. *Applicant's Spouse's Statement*, dated December 22, 2006. The applicant's daughter states that she really misses the applicant, all of her friends have fathers living with them, she does not get to buy a lot of toys or go out to eat, and her mother says they have to pay the rent and bills when she asks her for something. *Applicant's Daughter's Statement*, at 1. The applicant's spouse's brother states that he provided the applicant's spouse with \$400 in monthly support from January to December 2006. *Applicant's Brother-in-Law's Statement*, dated December 19, 2006. The record reflects that the applicant's spouse suffers from depressive disorder, she is under a doctor's care, she is on medication, she has had problems being able to work and she has been advised not to work. *Letter from [REDACTED]*. The record reflects that the applicant made the majority of the household income. *Applicant's Tax Returns*, various dates. Based on financial and psychological issues affecting the applicant's spouse, the AAO finds that she would suffer extreme hardship if she remained in the United States without the applicant.

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.