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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**

*H6*

FILE: [REDACTED]  
(CDJ 2004 856 530)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **APR 06 2010**

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

[REDACTED]

**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 under section 212(a)(9)(B)(i)(II) of 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 is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and United States citizen children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated March 23, 2007.

On appeal, counsel contends that the applicant's qualifying relative would suffer extreme hardship and United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application. *Form I-290B, Notice of Appeals to the Administrative Appeal Office (AAO) and attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; published country conditions reports; a statement from the applicant's father-in-law; statements from family members; medical statements for the applicant's spouse, the applicant's children, and the applicant's mother-in-law and father-in-law; a Notice of Default for the applicant's father-in-law; statements from the Social Security Administration; and public benefits statements from the State of Colorado. The entire record was reviewed and considered in rendering a decision on the appeal. The record also contains documents in the Spanish language. However, as these documents are not accompanied by English-language translations, they will not be considered in this proceeding. *See* 8 C.F.R. § 103.2(b)(3).

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.

In the present case, the record indicates that the applicant entered the United States without inspection in July 1997 and departed in August 2004, voluntarily returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated February 1, 2006. The applicant, therefore, accrued unlawful presence from July 1997 until he departed the United States in August 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of his August 2004 departure from the United States. The applicant is, therefore, 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.<sup>1</sup>

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's

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<sup>1</sup> The record also indicates that during his consular interview, the applicant indicated that he was convicted of theft in 1996. *Form OF-194, Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated February 1, 2006. While the consular officer makes reference to conviction records, the AAO observes that the record does not include criminal records for the applicant. However, the AAO need not analyze whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude or whether he is eligible for a waiver under section 212(h) as he must first establish extreme hardship under section 212(a)(9)(B)(v) of the Act, the more restrictive of the waivers. Eligibility for a waiver under section 212(a)(9)(B)(v) will also waive any inadmissibility under section 212(a)(2)(i)(I) of the Act.

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 the United States, as she 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.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. All of the immediate family of the applicant's spouse live in the United States. *Statement from the applicant's spouse*, undated. The applicant's spouse has lived in the United States since she was one year old. *Id.* The applicant's spouse speaks Spanish. *Attorney's brief*.

The applicant's spouse resides with her parents and assists them in any way she can. *Statement from the applicant's spouse*, undated; *Attorney's brief*. Her father suffers from a foot deformity that makes walking painful. *Statement from* [REDACTED] dated July 26, 2005. Standing for time periods greater than two hours increase his risks for infection or amputation. *Id.* The applicant's spouse's father is on disability due to his diabetes and foot problems secondary to his diabetes. *Statement from* [REDACTED], dated May 14, 2007; *Statements from the Social Security Administration, Retirement, Survivors and Disability Insurance*, dated January 4, 2006 and February 16, 2006. The applicant's spouse's mother suffers from diabetes and other minor health issues that restrict her from working. *Statement from* [REDACTED], dated May 14, 2007. The applicant and his spouse are the heads of her parent's household and assist them in their daily lives. *Id.* The applicant's spouse's father has not made his required mortgage payments, defaulting on his loan. *Notice of Default*, dated March 12, 2007. Counsel notes that if the applicant's spouse were to reside in Mexico, she would not be able to care for her parents, take them to their medical appointments, keep their house, help them to buy their groceries, or provide them with emotional support. *Attorney's brief*. Counsel also states that the applicant's spouse is unfamiliar with Mexican culture and is not equipped to compete for a job if she were to relocate to Mexico, as Mexico has a high unemployment rate and she has few skills due to her lack of higher education. *Id.*

While the AAO acknowledges the documented health conditions of the applicant's spouse's parents as well as the financial difficulties they are encountering, it notes that the record fails to establish that the applicant's spouse's siblings or her parents' siblings are unwilling or unable to assist them financially or to assume responsibility for their healthcare needs. Further, while the record includes published country conditions reports that provide an overview of the human rights situation in Mexico, as well as its history, economy, society and government, it does not establish that the applicant and his spouse would be unable to obtain employment in Mexico. Although the record indicates that the minimum wage in Mexico does not provide a decent standard of living for a worker and his family, it does not demonstrate that the applicant or his spouse, who have experience

as a pipe fitter and an office manager respectively, would be required to work at minimum wage jobs. *Section on Mexico, Country Reports on Human Rights Practices – 2006*, Department of State, released March 6, 2007; *Statement from the applicant's spouse*, undated. 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

Counsel also states that if the applicant's family were to move to Mexico, his children would not have access to quality education and it could have an affect on their health. *Id.* Although the AAO notes counsel's assertions, it again observes that children are not qualifying relatives for the purposes of a section 212(a)(9)(B)(v) proceeding. In that the record fails to support counsel's statements with documentary evidence and to demonstrate how any hardship the applicant's children might encounter would affect their mother, the only qualifying relative, it does not establish that the applicant's spouse would suffer hardship based on her children's relocation to Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Mexico. *Naturalization certificate*. All of the immediate family of the applicant's spouse live in the United States. *Statement from the applicant's spouse*, undated. The applicant's spouse has lived in the United States since she was one year old. *Id.* The applicant's spouse states that in June 2005, she resigned from her place of employment due to pregnancy complications. *Id.* She notes that she receives government assistance to provide for her family. *Id.*; *Summary of Eligibility, State of Colorado*, dated February 22, 2007. She also asserts that the applicant has not been able to find work in Mexico. *Statement from the applicant's spouse*, undated. Counsel for the applicant states that the applicant's spouse has been unable to find employment because she needs the applicant to help raise their family and share responsibilities with her. *Attorney's brief*. The AAO notes that the record establishes that the applicant's spouse has been approved to receive benefits from the State of Colorado as of December 2006. However, the record fails to demonstrate, e.g., a statement from a licensed medical professional, that the applicant's spouse is unable to obtain employment to support her family or, as previously discussed, that the applicant is unable to obtain employment in Mexico and financially assist his spouse from outside the United States. Furthermore, the AAO observes that economic hardship alone does not constitute extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). *See 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)).

Counsel contends that the District Director failed to consider the undesirable consequences for the applicant's children of having to grow up without a father. *Attorney's brief*. She states that the children are at an age where they need the emotional connections necessary for an individual to develop into a mature and productive adult and that this qualifies as an extreme hardship for their

mother. The AAO acknowledges counsel's claims but does not find the record to support them with documentary evidence, e.g., an evaluation by a licensed mental health practitioner or other medical evidence. 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). As the applicant's children are not qualifying relatives in this proceeding and the record does not document how the hardship they might experience in their father's absence would affect their mother, the record fails to establish that the impact of the applicant's absence on his children would result in extreme emotional hardship for his spouse.

The applicant's spouse notes how much damage separation can do to a family. *Statement from the applicant's spouse*, dated February 3, 2006. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.