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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 780 420

IN RE: [redacted]

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (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 the spouse of a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated September 24, 2007, the district director found that the applicant failed to establish extreme hardship to her spouse as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B) dated October 17, 2007, the applicant's spouse observes that the district director states in his decision that he did not receive the applicant's spouse's hardship statement. The applicant's spouse states that he is attaching his hardship statement to the appeal. The applicant's spouse states that his wife and daughter are living in Mexico and he is now seeking medical treatment for his depression and anxiety attacks. He states that he is enclosing medical documentation. He also states that his daughter is suffering extreme depression and has been asked to participate in a psychological evaluation at her school. He states that the applicant cries with despair everyday and that he believes his family's situation is extreme hardship.

In the present application, the record indicates that the applicant entered the United States without inspection on June 1, 1985. The applicant remained in the United States until January 1, 2002. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until January 1, 2002. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 1, 2002 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.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant and the applicant's child is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). Although the present case did not

arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes the Notice of Appeal to the AAO, copies of medical prescriptions for the applicant's spouse, a letter regarding the psychological health of the applicant's daughter, a letter from the applicant's daughter's school, a letter from the applicant's daughter's doctor, and a statement from the applicant's spouse.

In a letter dated April 26, 2006, the applicant's spouse states that he is suffering from being separated from his wife and child. He states that he has his two stepsons living in the United States with him and he longs for his family to be together. The AAO notes that the applicant's spouse also states that his family does not have extreme hardship to prove and that they are healthy in life and finances.

In a letter dated October 3, 2007, the applicant's daughter's doctor in Mexico states that he has been treating the applicant's daughter for over a year and that she has been treated for repetitive respiratory infections. The doctor states that the infections are probably caused by an allergic reaction to the farms surrounding her home where pigs and goats are raised.

In a letter dated November 10, 2006, a teacher from the applicant's daughter's school in Mexico states that the applicant's daughter is conducting herself in a matter that worries the school and that she should have psychological attention. The teacher states that she shows a lack of attention and she is depressed and sad because of not seeing her father.

In a letter dated October 6, 2007 the director of "DIF" Municipality states that the applicant's spouse had a consultation regarding her daughter's problems and that they believe a strong

improvement will be made with the return of the applicant's spouse and child to the United States.

The record also contains copies of a prescription for Xantax and a prescription for Zoloft for the applicant's spouse.

The AAO notes that the record is inconsistent as to the emotional state of the applicant's spouse. In his statement, the applicant's spouse states that he is healthy in life and finances, but then submits copies of prescriptions for an anti-depressant and an anti-anxiety drug. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained this inconsistency in the record.

The AAO notes further that, as stated above, hardship to the applicant's child is not considered under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. The current record does not make a connection between the suffering of the applicant's daughter and the suffering of the applicant's spouse. Furthermore, the applicant's spouse has not presented evidence to establish that his U.S. citizen daughter cannot reside in the United States with him. Thus, based on the current record, the AAO cannot find that the applicant's spouse suffers extreme hardship as a result of being separated from the applicant.

Moreover, the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico. The applicant's spouse does not make any statements or claims regarding the hardship he would suffer as a result of relocating to Mexico to be with the applicant. In order for a waiver to be granted the applicant must show that her spouse would suffer extreme hardship as a result of being separated from her and as a result of relocating to Mexico to be with her. 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)). The applicant must submit documentation to support any claims of hardship.

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 she 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.