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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  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: JUL 09 2010

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:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 again seeking admission 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.

In a decision dated December 3, 2007, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of District Director* dated December 3, 2007.

On appeal, the applicant's attorney provided a brief on his behalf. In the brief, the attorney contends that the applicant's qualifying relative, his wife, is encountering financial, emotional and medical hardships as a result of her separation from the applicant.

The record contains Biographic Information (Form G-325A) regarding the applicant, an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), two letters from the qualifying relative, two letters from the qualifying relative's employer, a letter from the doctor of the qualifying relative's children, a medical report regarding the applicant's mother, a decision from the District Director, a Notice of Appeal (Form I-290B), an appeal brief, a psychological report and exam, a letter from the applicant's mother written in Spanish, a list of medical expenses, the birth certificates of the qualifying relative's children, a letter from the qualifying relative's bank and her account history, another doctor's letter regarding one of the qualifying relative's children and three reference letters.

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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has held:

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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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.

The applicant's qualifying relative in this case is his spouse, who is a naturalized United States citizen.

The record indicates that the applicant entered the United States without inspection in June of 1992, and remained until February of 2007 when he voluntarily departed. The applicant thus accrued unlawful presence from when he entered the United States in June 1992 until February 2007, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Mexico and in the event that she remains in 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.

The evidence submitted relating to the hardships facing the applicant's qualifying spouse includes two letters from the qualifying relative, two letters from the qualifying relative's employer, a letter from the doctor of the qualifying relative's children, a medical report regarding the applicant's mother, Form I-290B, an appeal brief, a psychological report and exam, a list of medical expenses, the birth certificates of the qualifying relative's children, a letter from the qualifying relative's bank accompanied by her account history, another doctor's letter regarding one of the qualifying relative's children and three reference letters. Although the applicant also provided a letter in Spanish from his mother in the initial waiver application, Form I-601, this letter was written in Spanish and the requisite translation was not provided. 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] shall be accompanied by a full English language translation which the translator has certified as

complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the letter cannot be considered in analyzing this case because a translation was not provided.

In the appeal brief, the attorney contends that the qualifying relative is experiencing financial and medical hardships, as a result of the applicant's inadmissibility. The appeal brief also asserts that the qualifying spouse cannot live in Mexico because she "cannot afford treatment for her depression in Mexico" and "her children would lose their education in the United States." The letter from the applicant's spouse also states that she is experiencing financial, emotional and medical hardships due to the separation from her husband.

The AAO finds that the applicant's spouse would suffer extreme financial hardship as a consequence of being separated from the applicant if she stayed in the United States. In his appeal brief, the applicant's attorney asserts that the applicant's spouse is experiencing financial hardships. These claims were supported by evidence such as the qualifying spouse's letters, materials relating to her finances, her reference letters and her employer letters. Moreover, according to a letter from her employer, [REDACTED], Branch Manager of [REDACTED], the qualifying spouse's performance has been adversely affected by the applicant's inadmissibility. Her employer states that the "stress of this incredible ongoing situation has had a negative impact on [her] which affects her ability to perform her job duties." The applicant's spouse also contends that she along with her children, are suffering emotionally without the applicant. The applicant documented the depression of the applicant's spouse and the emotional issues, such as separation anxiety, facing the children. As such, the applicant sufficiently demonstrated that his qualifying wife would experience extreme hardship as a result of his inadmissibility.

However, the applicant must also demonstrate that his qualifying spouse would suffer an extreme hardship in the event that she relocates to Mexico. The record contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant and his spouse would likely reside. If the applicant's spouse relocated to Mexico, she would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting herself and family alone. With regard to the potential financial hardships faced by the applicant's qualifying relative in Mexico, the letter from the applicant's spouse asserts that she "cannot move to Mexico to be with [her] husband because he is working as a laborer and earns very little money." No evidence was provided to support this claim. Such assertion made by the applicant's spouse is evidence and has been considered. However, an assertion cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Likewise, with regard to potential emotional and medical hardships faced by the applicant's qualifying relative in Mexico, although the applicant's attorney indicates that the applicant's spouse "cannot afford treatment for her depression in Mexico," the attorney failed to document that the applicant's spouse would continue to experience depression if she was no longer separated from her spouse. In fact, the letter from the applicant's spouse indicates that "since [the

applicant] has left [she] has been suffering bad headaches and have been undergoing a great deal of depression.” Therefore, it does not appear that the applicant’s spouse had issues with depression prior to her separation from the applicant, and therefore such condition should likely not continue if reunited with the applicant, absent any evidence to indicate otherwise.

In addition, the record reflects that the applicant’s spouse is a native of Mexico. She is unlikely to experience the hardships associated with adjusting to a foreign culture. Further, the applicant has not addressed whether he has family ties in Mexico, and the AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant’s spouse would be affected specifically by any adverse conditions there. As such, the current record does not establish that the applicant’s spouse would experience extreme hardship upon relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.