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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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Services

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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:

SELF-REPRESENTED

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 her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In a decision dated September 14, 2007, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of District Director* dated September 14, 2007.

On appeal, the applicant's qualifying spouse provided a brief stating that "the applicant's enforced stay in Mexico would create all types of hardships" for him and his family. He also provided a letter that indicates he is suffering from emotional hardships, as he is very sad his wife is not with him and because he has to cross the border so frequently. The applicant's spouse also asserts that he needs his wife to help care for him in the United States because he has diabetes and high blood pressure.

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), a letter from her qualifying spouse in Spanish, a Notice of Appeal (Form I-290B), a brief and letter from the applicant's spouse written in English, the applicant's marriage certificate, a death certificate for the qualifying spouse's first wife and a naturalization certificate.

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 her spouse, who is a naturalized United States citizen.

The record indicates that the applicant entered the United States without inspection in October 2002, and remained until July 2004 when she voluntarily departed. The applicant thus accrued unlawful presence from when she entered the United States in October of 2002 until July of 2004, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her 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.

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 he relocates to Mexico and in the event that he remains in 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.

The record contains references to hardship the applicant's child 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(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The only evidence submitted relating to the potential hardships facing the applicant's spouse was a brief and letter from the applicant's spouse submitted on appeal, the applicant's marriage certificate and a death certificate for her spouse's first wife. Although the applicant provided a letter from her qualifying spouse 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, this letter from the applicant's spouse without a translation cannot be considered in analyzing this case.

As previously stated, the applicant's qualifying spouse's brief asserts that "the applicant's enforced stay in Mexico would create all types of hardships" for him and his family. However, he fails to specify those hardships, other than saying that he is sad, his family needs to be together and that he is "sick" due to his diabetes and high blood pressure.

Although the record shows that separation from the applicant has caused emotional hardships to the applicant's husband, as he is sad and having a hard time dealing with such separation, the evidence in this record is not sufficient to demonstrate that the challenges encountered by him, considered cumulatively, meet the extreme hardship standard. First, while the emotional hardship is apparent from the applicant spouse's letter, the applicant did not provide medical records, detailed testimony, or other evidence to show that he is facing psychological hardships or hardships that are unusual or beyond what would be expected upon separation due to the applicant's inadmissibility. Similarly, the applicant noted in his letter that he is "sick" from diabetes and high blood pressure, yet no medical documentation was provided to support these assertions.

Second, the applicant's spouse seems to allude to potential financial hardships by indicating that he finds it "difficult to envision the main breadwinner having to be [the] father and mother" in his brief. However, given the lack of information in the record regarding the qualifying spouse's income and expenses, the AAO cannot conclude that separation has caused him extreme financial hardship. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). Accordingly, the evidence in the record is not sufficient to establish that the applicant's spouse is suffering from extreme hardship.

The AAO likewise finds that the applicant has not met her burden in showing that her spouse would suffer extreme hardship if he relocated to Mexico. The record is silent regarding whether relocation to Mexico could cause challenges for the applicant's spouse. If the applicant's spouse relocated to Mexico, he would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting two households. Moreover, given the lack of information regarding the applicant spouse's income and expenses, the AAO cannot conclude that relocation would cause extreme financial hardship.

The record also does not indicate whether the applicant's spouse has any ties to family in the United States which would be impacted by relocation. Likewise, the record is silent regarding whether the applicant has family ties in Mexico. There is also no evidence that the applicant's spouse has any significant health conditions that would be harmed by relocation to Mexico. Although claims were made that the applicant's spouse has diabetes and high blood pressure, none of these conditions were properly confirmed through medical documentation. Lastly, the record also contains no documentation regarding unsafe country conditions in Mexico, particularly in the

location where the applicant resides or other locations where she and her spouse would likely reside. 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. Accordingly, the record does not show that relocation to Mexico would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

In sum, although the record indicates the applicant's spouse is encountering hardships based on separation and relocation, it does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility 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.