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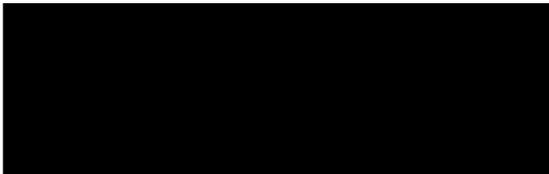
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



FILE:



Office: MEXICO CITY, MEXICO

Date: **JUL 13 2010**



IN RE:

Applicant:



APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Taryn Syed
for

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 lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and United States citizen child.

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 October 29, 2007.

On appeal, the applicant's child states the unification of families is an important factor for the well-being of its members. *Form I-290B, Notice of Appeal or Motion*.

In support of this assertion the record includes, but is not limited to, a statement from the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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 on July 3, 1972. *Form I-213, Record of Deportable Alien*. The applicant was placed into proceedings and an Immigration Judge granted him voluntary departure to leave by October 27, 1976. *Decision of the Immigration Judge*, dated July 27, 1976. The applicant failed to depart the United States and was ordered deported with arrangements for his departure to Mexico to take place on January 26, 1978. *Statement from United States Department of Justice, Immigration and Naturalization Service*, dated January 23, 1978. The record does not indicate when the applicant departed the United States, although the AAO observes that the applicant married his spouse in Mexico on July 5, 1988. *Marriage certificate; Approved Form I-130, Petition for Alien Relative*. In March 2002, the applicant entered the United States without inspection and departed in June 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated June 9, 2006. The applicant, therefore, accrued unlawful presence from March 2002 until he departed the United States in June 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his June 2006 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.

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 on the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or child 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. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 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 the 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 was born in Mexico. *Permanent Resident Card*. The applicant's daughter states that the applicant's spouse cannot go to Mexico and live with the applicant, the applicant and his spouse will have no way to support themselves at their ages and they will not find a job in Mexico. *Form I-290B*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record does not address whether she has any family in Mexico. The record does not provide supporting documentation of employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition that would require treatment in Mexico, physical or mental, and if so, whether she would be able to receive adequate care. Going on record without supporting documentation will not 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)). When looking at the record before it, 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 was born in Mexico. *Permanent Resident Card*. The applicant's spouse asserts that she cannot keep up with all of her expenses, such as the mortgage payment, utility bills, and food, without the applicant. *Statement from the applicant's spouse*, dated July 15, 2007. While the AAO acknowledges this statement, it notes that the record does not include documentation of these expenses, nor does the record include W-2 forms or tax statements for the applicant's spouse showing her annual earnings. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Furthermore, there is nothing in the record to show that the applicant would be unable to contribute to his family's financial well-being from a location other than the United States.

The applicant's spouse notes that in addition to receiving financial help from the applicant, family unity is one of the most important things within her family. *Statement from the applicant's spouse*, dated July 15, 2007. 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. 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.