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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  
(CIUDAD JUAREZ)

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,

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.<sup>1</sup>

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 her last departure from the United States. The applicant is married to a naturalized United States citizen.<sup>2</sup> She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and two 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 November 7, 2007.

On appeal, the record indicates that the applicant and her family would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*.

In support of these assertions the record includes, but is not limited to, a statement from the applicant's spouse and a psychological evaluation for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes several documents in the Spanish language unaccompanied by certified translations. Accordingly, the AAO will not consider these documents. *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-

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<sup>1</sup> Although the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the AAO notes that the individual listed is not an attorney and has provided insufficient evidence to establish that she may represent the applicant pursuant to the regulation at 8 C.F.R. § 292.1. As such, the AAO will not recognize this individual as a representative.

<sup>2</sup> The Form I-601, Application for Waiver of Grounds of Inadmissibility indicates that the applicant's mother is a resident. As there is no documentation included in the record to support a finding that the applicant's mother is a lawful permanent resident, the AAO will not consider her to be a qualifying relative for the purposes of this case. 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)).

....

(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 February 2004 and voluntarily departed on September 23, 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated September 27, 2006. The applicant, therefore, accrued unlawful presence from February 2004 until she departed the United States on September 23, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her September 23, 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 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 her children would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she 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 he resides in Mexico or 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.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Approved Form I-130, Petition for Alien Relative*. According to a psychological evaluation, the applicant's spouse moved to the United States at the age of 12 and has many relatives in the United States. *Statement from [REDACTED], Ph.D.*, dated November 17, 2007. The record does not address whether the applicant's spouse has family in Mexico. The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record does not address 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 he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Approved Form I-130, Petition for Alien Relative*. According to a psychological evaluation, the applicant's spouse moved to the United States at the age of 12 and has many relatives in the United States. *Statement from [REDACTED] Ph.D.*, dated November 17, 2007. The record does not address whether the applicant's spouse has family in Mexico. The applicant's spouse notes that he has felt despair, extreme loneliness, and desperation since his spouse has been in Mexico, away from their marital household. *Statement from the applicant's spouse*, dated November 28, 2007. A psychological evaluation included in the record notes that the applicant's spouse is suffering from Major Depressive Disorder, Single Major Depressive Episode, Severe without Psychotic Features. *Statement from [REDACTED], Ph.D.*, dated November 17, 2007. The evaluation notes that the applicant's two children are in Mexico. *Id.* The evaluation also mentions that the applicant's most alarming method of coping is overeating and that he has gained 80 lbs. in a year. *Id.* The psychologist suggests that the applicant's spouse be evaluated for medications which will help him decrease his anxiety, depression and sleeplessness. *Id.* She also suggests that he see a counselor to help him deal with the stress and depression. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and

elaboration commensurate with an established relationship with a licensed healthcare professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The record does not address whether a separation from the applicant would financially affect the applicant's spouse. The record does not document what expenses, such as utility bills, telephone bills, and mortgage or rent statements, the applicant's spouse must incur. The record does not include tax statements, W-2 forms, or earnings statements to show the annual earnings of the applicant's spouse. Furthermore, the record does not include any documentation to show that the applicant would be unable to contribute to her family's financial well-being from Mexico.

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 his separation from the applicant. However, the record does not distinguish his situation, if he 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 her spouse if he were to reside in 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.