



U.S. Citizenship
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FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: JUL 22 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:



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,

*Tang 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 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.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated November 7, 2007.

On appeal, counsel for the applicant states that the applicant's spouse would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the sister of the applicant's spouse; a statement from the brother-in-law of the applicant's spouse; a Mary Kay purchase order; telephone bills; a vehicle registration bill; a homeowner's insurance policy; a homeowner's insurance statement; property tax statements; a title policy; a warranty deed; a vehicle purchase statement; money orders; medical letters for the applicant; a statement from a friend; an employment letter from the applicant's spouse; and tax statements for the applicant and her 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 in May 1998 and voluntarily departed on August 26, 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated September 7, 2006. The applicant, therefore, accrued unlawful presence from May 1998 until she departed the United States on August 26, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her August 26, 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 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. The record does not address whether the applicant's spouse has family members 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. The applicant's spouse asserts that the applicant has been diagnosed with depression and is currently on prescription medication for this condition. *Statement from the applicant's spouse*, dated September 5, 2006. The record includes a statement from [REDACTED] M.D. which notes the applicant has hyperlipidemia and anxiety. *Statement from [REDACTED] M.D.*, dated September 5, 2006. The record does not evidence the severity of the applicant's medical problems. 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.* The applicant's spouse's sister and brother-in-law live in the United States. *Statements from the applicant's spouse's sister and brother-in-law*, dated December 3, 2007. The applicant's spouse notes that he must support the applicant while she is in Mexico. *Statement from the applicant's spouse*, dated December 5, 2007. The record includes money orders documenting money the applicant's spouse has sent to the applicant. *Money orders.* The applicant's spouse notes that the applicant has been unable to secure a job and this has been very difficult on him because of the many bills and expenses in the United States. *Statement from the applicant's spouse*, dated December 5, 2007. The record includes documentation of the applicant's expenses, including telephone bills; a vehicle registration bill; a homeowner's insurance statement; property tax statements; a vehicle purchase statement; and money orders. *See documentation of bills.* The applicant's spouse also notes that he is a small business owner and the applicant served as the managing partner for the business. *Statement from the applicant's spouse*, dated December 5, 2007. He notes that it has been extremely difficult for him to run the entire business, as he received minimal help from family. *Id.* The applicant's spouse further notes that the applicant sold Mary Kay products and the money she earned helped to supplement what was made by his business. *Id.* The record includes a purchase order for Mary Kay cosmetics for the applicant. *Purchase order for Mary Kay.* With her absence, the applicant's spouse states that he has lost the income she earned. *Statement from the applicant's spouse*, dated December 5, 2007. Tax statements included in the record show the applicant and her spouse's earnings to be \$15,865.00 for 2001, \$16,661.00 for 2000, and \$7,533.00 for 1999. *Tax statements.* A statement from the applicant's spouse verifying his employment notes that his average weekly earnings are \$750.00. *Employment verification letter from the applicant's spouse*, dated July 17, 2002. While the record does not document, through published country conditions reports, the economy and the availability of employment in Mexico, the AAO acknowledges the documented expenses and earnings of the applicant's spouse and the financial difficulties he is having. The applicant's spouse asserts that the applicant has been diagnosed with depression and is currently on prescription medication for this condition. *Statement from the applicant's spouse*, dated September 5, 2006. The record includes a statement from [REDACTED]

██████████ M.D. which notes the applicant has hyperlipidemia and anxiety. *Statement from* ██████████ ██████████ M.D., dated September 5, 2006. The record does not evidence the severity of the applicant's medical problems. The applicant's spouse notes that this is a bad situation and his family misses the applicant. *Statement from the applicant's spouse*, dated December 5, 2007. He states that physically and mentally, he is totally drained, and he is always down and tired. *Id.* He does not know how much longer he can take without the applicant's presence. *Id.* The sister of the applicant's spouse observes her brother as depressed over the situation. *Statement from the sister of the applicant's spouse*, dated December 3, 2007. When looking at the aforementioned factors, particularly the documented financial difficulties of the applicant's spouse and his emotional state as observed by his family, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he relocates to Mexico, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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)(v) 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.