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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**

#2 H6



FILE:



Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

JUN 02 2010

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant's husband requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed December 4, 2007. The record contains no evidence that a brief or additional evidence has been filed. Therefore, the record is considered complete.

The record reflects that 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 seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and the mother of a United States citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her United States citizen husband and son.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 7, 2007.

On appeal, the applicant's husband claims that he is suffering extreme hardship and he apologizes for the applicant's unlawful presence in the United States. *Form I-290B, supra*.

The record includes, but is not limited to, statements from the applicant's husband, letters of support for the applicant and her family, a health insurance card for the applicant's spouse, statements from Dr. [REDACTED] and Dr. [REDACTED] regarding the applicant's husband's medical conditions, a prescription note for the applicant's husband, a medical statement for the applicant's son, and a birth certificate for the applicant's son. The entire record was reviewed and considered in arriving at 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 [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 on May 10, 2003 without inspection. On December 22, 2004, the applicant's naturalized United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 7, 2005, the applicant's Form I-130 was approved. On September 26, 2006, the applicant voluntarily departed the United States. On October 5, 2006, the applicant filed a Form I-601. On November 7, 2007, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from May 10, 2003, the date she entered the United States without inspection, until September 26, 2006, the date she departed the United States. As the applicant is seeking admission to the United States within ten years of her September 26, 2006 departure from the United States, she is inadmissible 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 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. Hardship the applicant experiences upon removal is not directly relevant to a determination of extreme hardship in a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission to the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's son is not considered in section 212(a)(9)(B) waiver proceedings except to the extent that it creates hardship for a qualifying relative. 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).

The concept of extreme hardship to a qualifying relative "is not...fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the

United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has also 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only "in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The AAO also observes that, in this matter, extreme hardship to a qualifying relative must be established in the event of relocation to Mexico or if the qualifying relative remains in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The applicant's husband states all of his immediate family reside in the United States. The AAO acknowledges that the applicant's husband has resided in the United States for many years. However, he is a native of Mexico and it has not been established that he does not speak Spanish or that he has no family ties to Mexico. In fact, the AAO observes that the applicant's husband's grandparents reside in Mexico. *See Form I-290B, supra*. The applicant's husband claims his grandparents are poor and cannot help him if he moves to Mexico. The AAO notes that there is no evidence in the record establishing that

the applicant's husband would require the assistance of his grandparents should he join the applicant in Mexico.

In a letter dated November 26, 2007, Ms. [REDACTED] states "[i]t is not an option for [the applicant's husband] to move down to Mexico and lose his job and ability to take care of his family financially." The applicant's husband states he is a key employee at his job and his employment "support[s] [the applicant] and son and provide[s] them with health benefits." He claims that if the applicant is "not allowed to return to the United States, [he] would lose [his] career path, [his] health insurance, and [his] retirement benefits." The AAO notes the record fails to contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation. Going on record without supporting documentation is not sufficient to 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)).

The AAO notes that on March 14, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to Mexico. This warning, however, is focused on northern Mexico, i.e., along the United States-Mexico border. In that the record establishes that the applicant's husband is from the Mexican state of Michoacan and the applicant is from Jalisco, the AAO does not find the record to establish that the applicant's family would relocate to a part of Mexico where they would be subjected to violence. Accordingly, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

On appeal, the applicant's husband states that if his family returned from Mexico, he "would have significantly less stress, anxiety, and depression." In an undated letter, Ms. [REDACTED] the applicant's husband's sister, states that her brother "is constantly sick due to the depression and stress that the situation is causing him" and that his separation from the applicant is creating a negative impact on his career. In a letter dated November 16, 2007, Dr. [REDACTED] reports that he treated the applicant's husband for depression and anxiety, and that he is "currently under medical management and supervision and receiving pharmacological help and counseling." The record includes a copy of a prescription for Xanax, issued to the applicant's spouse on November 16, 2007. The record also establishes that the applicant's husband was treated for depression while he was in Mexico on January 22, 2007.

Although the input of any medical professional is respected and valuable, the AAO notes that the statements concerning the applicant's spouse's mental health are not provided by mental health practitioners but by an internist and a "surgery and birth" doctor. Further, each indicates that the doctor's findings are based on a single examination of the applicant's husband. Accordingly, the AAO finds them to lack the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby diminishing their value to a determination of extreme hardship.

The applicant's husband states that due to the stress of being separated from the applicant, he has also been "seeking care for facial paralysis," cannot sleep or eat, is taking medicine for depression and his work performance is suffering. The AAO notes that other than the applicant's husband's statement, there is no evidence in the record that the applicant's husband is suffering from any medical conditions.

Going on record without supporting documentation is not sufficient to 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)). Although the applicant's husband states his job performance is suffering, the AAO notes that a letter from the applicant's spouse's employer fails to indicate that this is the case. In fact, Jeffrey Sparks states that the applicant's husband is a "responsible hard working person who very seldom misses work." The AAO also finds the record to contain no documentation that establishes the applicant's husband is suffering financial hardship in the applicant's absence. Additionally, the AAO notes that it has not been established that the applicant is unable to obtain employment in Mexico and contribute to her family's financial well-being from a location outside the United States

The applicant's husband states that his son is in Mexico with the applicant, but that "[a]s a result of the change in food, climate, and the separation of our family, [his] son has been sick constantly." The AAO notes that there is no documentation in the record establishing that the applicant's son cannot be treated for his medical conditions in Mexico or that he has to return to the United States to receive treatment. Moreover, although the record establishes that the applicant's son was treated for respiratory and digestive problems on November 23, 2007 in Mexico, it does not indicate that he suffers from continuing medical problems. The applicant's husband states he is paying out-of-pocket for his son's medical treatments in Mexico, but that if his son was in the United States then he would be covered by his health insurance. The AAO notes that there is no evidence in the record that the applicant's husband is suffering any financial hardship by paying for his son's medical treatments in Mexico. While the AAO acknowledges that the applicant's son may be experiencing hardship in residing in Mexico, it again notes that the applicant's son is not a qualifying relative for the purposes of this proceeding and the record does not provide sufficient evidence of how any hardship he is suffering affects his father, the only qualifying relative. Accordingly, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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.