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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**

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FILE:

[REDACTED]

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

JUN 11 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

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 seeking readmission within ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated September 6, 2007.

On appeal, the applicant's spouse details the hardship that she is experiencing. *Form I-290B*, at 2, dated October 5, 2007.

The record includes, but is not limited to, a psychological evaluation of the applicant's spouse, an attorney's letter, a prescription for the applicant's spouse, medical notes for the applicant's spouse, a letter from the applicant's spouse's brother, a letter from the principal at the school attended by one of the applicant's children and statements from the applicant's spouse in Spanish. The AAO notes the statements in Spanish will not be considered as they are not accompanied by certified English language translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3). The entire record was reviewed and considered in rendering a decision on the appeal. There is no Form G-28, Notice of Entry of Appearance as Attorney or Representative, in the file. Therefore, the applicant will be considered to be self-represented.

The record reflects that the applicant entered the United States without inspection in July 1997 and departed the United States in February 2006. The applicant accrued unlawful presence during this entire period of time. The applicant is 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 and seeking readmission within ten years of his February 2006 departure from the United States.

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.

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 would impose an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. The AAO notes that the record does not include proof, such as birth certificates, of the relationship of the three claimed U.S. citizen children to the applicant. As such, their hardship will not be considered. 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).

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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. The applicant's spouse was evaluated by a psychologist who states that the applicant has been living in Jalisco and working in construction; work is scant in Mexico; and he is unable to offer monetary support for his family. *Psychological Evaluation*, at 2. The AAO notes that the financial hardship claims are not supported with documentary evidence. 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)). There is no other evidence of hardship presented for this prong of the analysis. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that she lost her home to foreclosure, became homeless, and has become depressed and distraught. *Form I-290B*. The applicant's spouse was seen by an attorney who states the applicant's spouse was very distraught; she began crying and rambling; she complained of extreme headaches, dizziness, was shaking, and looked very pale; she had become homeless with her three children and was trying to stay at a shelter for the homeless; her elderly parents insisted that she stay with them in a small room; her oldest son was acting out in school and had become disobedient and depressed, and he was crying a lot and very distraught not knowing what was to become of his father; she had ideas of suicide; he recommended that she see a doctor and maybe a psychologist; she was examined by a clinic and they found high blood pressure, onset of diabetes and possible mental health problems; the status of the applicant and the children bear down on the spouse; and the children may have to do without both parents. *Statement from* [REDACTED] at 1-2, dated October 5, 2007.

The applicant's spouse was evaluated by a psychologist who states that he administered a Beck Depression Inventory-II; the applicant worked as a painter, earned well and was the primary wage earner; they purchased a home; the applicant has been living in Jalisco and working in construction; work is scant in Mexico; he is unable to offer monetary support for his family; the applicant's spouse has assumed the role of primary wage earner and has been working at a La Quinta Inn; her infant was 40 days old when the applicant left; the children constantly voice deep frustration and longing for the applicant; the school has called the applicant's spouse voicing concerns that her seven-year-old cries a great deal and attributes his sadness to his father's absence; she has felt depressed, her appetite has increased, she feels fatigued, her energy level is chronically low, her hygiene has deteriorated, she is highly irritable, she has developed suicidal feelings; she has been on anti-depressant medication for six months; she was diagnosed with Major Depression, Single Episode, Severe with Psychotic Features; and the applicant's return would go far to relieve the conditions that are precipitating and maintaining her depression. *Psychological Evaluation*, at 1-5. The record includes a prescription for the applicant's spouse for fluoxetine and hydrochlorotriazole and a medical note that states that she is having problems with depression and hypertension. The AAO notes the letters from the applicant's spouse's brother and principal's letter which detail the emotional hardship that the applicant's spouse and one of her children are experiencing.

Based on the record, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States. However, as noted above, it has not been established that his spouse would experience extreme hardship if she were to join him in Mexico.

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.

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 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.