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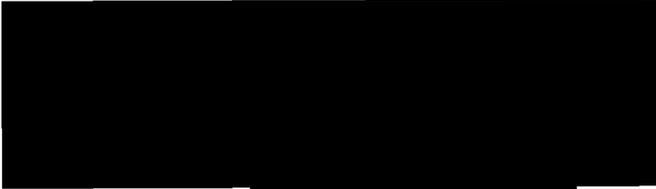
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [Redacted]
(CDJ 2004 724 604)

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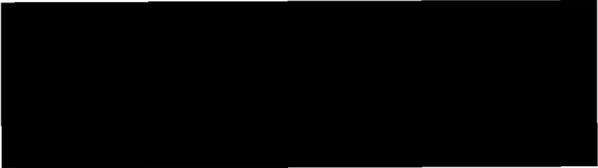
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IN RE:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 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 January 31, 2007.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship as a result of the family's separation from the applicant. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of this assertion, the record includes a statement from a licensed professional counselor; statements from the applicant's spouse; employment letters for the applicant's spouse; a warranty deed; statements from the Texas Rehabilitation Commission; a statement from the former pastor at the church attended by applicant's spouse's parents; a statement from a pastoral assistant who knows the applicant; a statement from the pastor at the applicant's church; statements from family members and friends; an offer of employment for the applicant; a published country conditions report; W-2 forms and tax statements for the applicant's spouse; celebratory cards and invitations; payment receipts; an eye prescription for the applicant; a car title; car insurance; movers' receipts; a cable bill; and credit card bills. 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 September 1997 and departed on January 4, 2006. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated January 17, 2006. The applicant, therefore, accrued unlawful presence from September 1997 until she departed the United States on January 4, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 4, 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 are 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 pursuant to section 212(i) of the Act. 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 the United States. *Birth certificate*. He resides with his parents who live in the United States. *Statement from* [REDACTED] [REDACTED] dated February 13, 2007. The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico. The record includes a published country conditions report that establishes that the minimum wage in Mexico does not provide a decent standard of living for a worker and a family, and only a small fraction of the workers in the formal workforce receive the minimum wage. *Mexico, Country Reports on Human Right Practices – 2005, U.S. Department of State*, dated March 8, 2006. While the AAO acknowledges this report, it notes the record does not include any documentation showing that the applicant's spouse would be unable to obtain employment above the minimum wage. The record indicates that the applicant's spouse helps somewhat with his older sister who is sick. *Statement from* [REDACTED] [REDACTED] dated February 13, 2007. The applicant's spouse states that his sister is mentally-retarded and submits documentation in support of this assertion. *Statement from the applicant's spouse*, dated February 22, 2007. The AAO notes that the documentation submitted shows that the sister of the applicant's spouse has a disability file that is under evaluation. *Statement from Texas Rehabilitation Commission*, dated December 29, 1993. The record also includes appointment notices for a mental examination to evaluate a mental retardation condition. *Statements from Texas Rehabilitation Commission*, dated January 5, 1994 and January 24, 1994. The record does not include the results of this examination or a diagnosis of mental retardation. 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, the record does not address what type of help the applicant's spouse provides his sister or establish that there are no other family members who can assist her. The record also makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether he would be able to receive adequate care upon relocation. 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 the United States. *Birth certificate*. He resides with his parents who live in the United States. *Statement from* [REDACTED] [REDACTED], dated February 13, 2007. The applicant's spouse faces additional financial challenges as a result of being separated from the applicant. *Id.* He sends the applicant money when he is able to do so. *Id.* The record includes documentation such as movers' receipts, a cable bill, and credit card bills showing various expenses of the applicant's spouse. *Movers' receipts; a cable bill; and credit card bills*. While the AAO acknowledges documentation of these

expenses, it notes there is nothing in the record to show that the applicant would be unable to obtain employment in Mexico and assist her spouse in meeting his financial obligations. Neither does the record include documentary evidence that establishes that the applicant's spouse is sending money to the applicant in Mexico.

The applicant's spouse states that he is living in a nightmare and it has been very difficult for him, his immediate family members and friends to be separated from the applicant. *Statement from the applicant's spouse*, dated February 22, 2007. According to a licensed professional counselor, the applicant's spouse has been sad, tearful, and concerned, and is losing sleep over his separation from the applicant. *Statement from [REDACTED]*, dated February 13, 2007. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter fails to state how many interviews of the applicant's spouse were conducted by the licensed professional counselor or discuss the bases on which she reached her conclusions. Moreover, the licensed professional counselor fails to diagnose or evaluate the sadness she states is being experienced by the applicant's spouse or to discuss, with any specificity, the type or extent of any impairment his sadness is causing. Accordingly, the submitted evaluation does not reflect the insight and elaboration required in a psychological evaluation, thereby rendering the licensed professional counselor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

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 or exclusion. 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 she 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.