

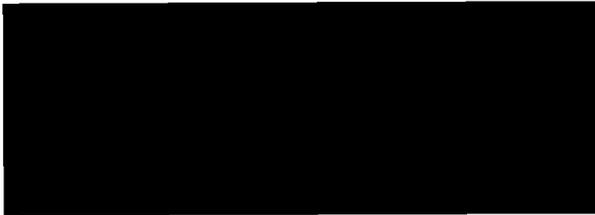
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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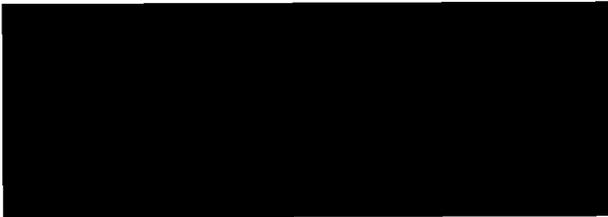
MAR 05 2010

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date:
CDJ 2004 758 397

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:



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, 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 (Ciudad Juarez), 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 her last departure from the United States. The applicant is the spouse of a U.S. citizen and has a U.S. citizen son. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated August 15, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated September 12, 2007, counsel states that the District Director erred in not considering the hardship declaration submitted by the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States without inspection in February 2000. The applicant remained in the United States until October 2005. Therefore, the applicant accrued unlawful presence from February 2000 until October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her October 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant or the applicant's child is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of hardship includes a declaration from the applicant’s spouse, a letter from the applicant’s spouse’s doctor, a note regarding dental surgery for the applicant’s son in Mexico, copies of tax returns from 2001 to 2003, a pay statement from the applicant’s spouse’s employer, and family photographs.

In his declaration dated September 13, 2007, the applicant’s spouse states he is suffering from major depression and will suffer irreparable mental anguish if the applicant is not able to return to the United States. He states that given his medical and psychological history he is not sure how much stress he can bear. The applicant’s spouse also states that his son, who is in Mexico with the applicant, requires oral surgery to correct dental defects in his mouth. He states that he knows his son can have his operation in the United States and he can care for him while he recovers.

In a letter dated September 13, 2007, the applicant’s spouse’s doctor states that the applicant’s spouse is his patient and has been diagnosed with Major Depression. The letter lists the applicant’s spouse’s symptoms as poor appetite, nightmares, and dysthymia. He states that because of these conditions the applicant’s spouse is unable to work or perform activities of daily living independently. The AAO notes that although the input of any health professional is respected and valuable, the submitted report does not indicate the length of the doctor-patient relationship or what course of treatment the doctor has recommended for the applicant’s spouse’s condition. Furthermore, the applicant’s spouse does not state in his declaration that he is now unable to work or care for himself because of his condition. Accordingly, the conclusions reached in the doctor’s letter do not reflect the insight and detailed analysis commensurate with an established relationship with a health professional and are of diminished value to a determination of extreme hardship.

The AAO notes that the applicant's son's need for oral surgery, although unfortunate, is not of much value in determining extreme hardship as the applicant's son is a U.S. citizen and free to return to the United States for his surgery.

The AAO recognizes that the applicant's spouse is enduring hardship as a result of the applicant's inadmissibility. However, the current record does not establish that the applicant's spouse's hardship rises to the level of extreme hardship. In regards to the applicant's spouse relocating to Mexico to be with the applicant, the applicant's spouse states in his declaration that he has lived in the United States for almost his entire life, his family is all in the United States, and he cannot move his family to Mexico. The record does not detail more specifically why the applicant's spouse cannot relocate to Mexico; though the length of his residency in the United States may be suggestive of hardship in adjusting culturally and economically, there is insufficient evidence to demonstrate the severity of this hardship in the case of the applicant's spouse. Likewise, the applicant's spouse has not submitted evidence to corroborate his assertion regarding the residency of his family members, or detailed more specifically the hardship he would suffer as a consequence of family separation. Finally, the record does not include any documentation to support his assertion that he cannot move his family to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant must submit documentation to support any claims of hardship.

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.