



U.S. Citizenship  
and Immigration  
Services

MAR 05 2010

FILE:

(CDJ 2004 502 007)

Office: CIUDAD JUAREZ, MEXICO

Date:

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:

SELF-REPRESENTED

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).

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, [REDACTED] 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 officer-in-charge 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 August 31, 2006.

On appeal, the applicant's spouse states that her mental health is getting pretty bad and she is unable to take care of herself or her children. *Form I-290B*, received October 2, 2006.

The record includes, but is not limited to, statements from the applicant's spouse and the applicant's spouse's sister. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in January 1998 and departed the United States in March 2005. 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 March 2005 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 imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to any children he may have 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. 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 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 states that she and her daughters do not understand Spanish, her daughters do not understand the Mexican culture or traditions, they do not understand the Catholic religion as they are Baptists, the schools in Mexico are far behind American schools, they are 100 percent American, she has been born and raised in America and she does not understand the Mexican culture, the water and fruits and vegetables in Mexico will make her and her daughters sick, and she was planning on going to school as a paralegal but would be unable to do this in Mexico due to the language barrier. *Applicant's Spouse's First Statement*, at 2-3, undated.

The AAO notes that the applicant's spouse states that she has three children. *Applicant's Spouse's Second Statement*, at 1, undated. However, the record does not include documentation, such as birth certificates, for the two daughters to establish this relationship, and, therefore, any hardship that the applicant's spouse claims she would encounter based on her daughters' hardship will not be considered. The applicant's spouse's divorce decree indicates that she has a son from a prior

marriage. However, she does not raise hardship issues in relation to her son. There is no other evidence of hardship presented for this part of the analysis. 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)). 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 has lost all hope of a normal life, she is the single mother of three children, she has panic attacks trying to get groceries, she breaks down in crying spells and has lost 30 pounds in three months, she is at the point of having a nervous breakdown, she has a family history of schizophrenia, she was put on Xanax when she was sixteen for her nerves and was told she was at a high risk of developing schizophrenia in the future, her mother is disabled and her father is deceased, her sister has two children of her own, her hands shake all of the time, and the applicant was her rock and helped with the house and the children, which reduced her stress. *Applicant's Spouse's Second Statement*, at 1-2. The applicant's spouse also states that her twin daughters have been very depressed and confused without the applicant; one of the twins eats all of the time for comfort, now has a weight problem, is not getting her school work done and cries herself to sleep at night; and the other twin does not want to eat anything, says that her stomach hurts and she misses her father, gets angry at her for the applicant leaving and acts violently. *Applicant's Spouse's First Statement*, at 1. The applicant's spouse's sister states that the applicant's spouse is struggling to keep a job to provide for her family, she has had an extremely hard time finding child care and has missed work, she is in danger of losing her job, the applicant helped her care for the children, her nerves are bad and she cries about everything, the applicant took care of the family, the children are very unhappy and depressed, and the children are doing poorly in school since the applicant's spouse is unable to help them with their homework. *Applicant's Spouse's Sister's Statement*, undated. The AAO notes again that the record does not document that the applicant and his spouse have twin daughters, the emotional hardship they are experiencing or its affect on their mother, the only qualifying relative. Neither is there proof of the applicant's spouse's family history of mental illness or her current mental health. There is no documentation reflecting that the applicant's spouse is employed or is at risk of losing her job. 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 remained in the United States.

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.