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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H6

FILE:

(CDJ 2004 802 362)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: MAR 06 2010

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).

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 her last departure from the United States. The applicant's spouse is a U.S. citizen and she 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 3-4, dated May 9, 2007.

On appeal, the applicant's spouse states that he is suffering from depression, he cannot survive in Mexico, and he does not want to lose his job. *Form I-290B*, received June 5, 2007.

The record includes, but is not limited to, a psychologist's letter for the applicant's spouse, letters from two pastors who know the applicant and her spouse, a statement from the applicant's spouse and medical records for the applicant's spouse. 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 July 2001 and departed the United States in October 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 her October 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 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 he resides in Mexico or in the United States, as he 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 states that he cannot survive in Mexico, and he does not want to lose his job. *Form I-290B*. While the AAO notes the applicant's spouse's statements regarding his inability to survive in Mexico and the loss of his U.S. employment, it does not find the record to include the documentation necessary to establish that he would not be able to obtain employment in Mexico that would allow him to support himself and the applicant. 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 includes an emergency service record for the applicant's spouse which reflects that he was diagnosed with Bell's Palsy and has been prescribed different medications. *Emergency Service Record*, dated November 26, 2006. The record is not clear as to the severity of the medical problem. It also fails to indicate that the applicant's spouse's condition could not be adequately treated in Mexico. There is no other evidence of hardship presented for this part 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 he 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 was evaluated by a psychologist who states that he confirmed the applicant's spouse's physician's diagnosis of depression; the applicant's spouse should begin an aggressive treatment for his depressive disorder; the applicant's spouse was prescribed an antidepressant that he began taking immediately and he will continue to receive psychotherapy services to restore his ability to function normally; the applicant's spouse's depression is due to the loss of the applicant resulting in severe loneliness, insomnia and preoccupation with her circumstances; and he will continue to be treated for depression but his prognosis is guarded in light of his situation. *Letter from Applicant's Spouse's Psychologist*, dated May 25, 2007. A medical note from the Aurora Health Center indicates that the applicant's spouse has been diagnosed with depression. *Note from Aurora Health Center*, dated May 19, 2007. The applicant's spouse states that his life has changed since he met the applicant, she has made him realize how beautiful life is, he is missing the moments that he shared with her, he has not been feeling well since he is awake every night, his head hurts and his hands shake, and he has been feeling something inside his chest. *Applicant's Spouse's Statement*, at 1, undated. A pastor who knows the applicant's spouse states that the forced separation has caused both the applicant and her spouse extreme hardship. *Letter from [REDACTED]* dated May 18, 2007. The applicant's spouse's pastor states that the applicant's spouse has had an extremely difficult time with the separation, he suffers from extreme depression and is under a doctor's care, he has come to him to receive support and encouragement, and he is not taking care of himself and may become desperate. *Letter from [REDACTED]* dated May 23, 2007. The record includes an emergency service record for the applicant's spouse that reflects that he was diagnosed with Bell's Palsy and has been prescribed different medications. *Emergency Service Record*. The record reflects that the applicant's spouse would suffer extreme hardship if he 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 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.