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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

#6

MAR 09 2010

FILE: [redacted] Office: MEXICO CITY, MEXICO Date:
(CDJ 2004 741 530) (CIUDAD JUAREZ)

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:

[redacted]

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 naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their three United States citizen children.

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 November 14, 2006.

On appeal, counsel for the applicant states that United States Citizenship and Immigration Services (USCIS) erred by not considering all of the relevant factors in the applicant's case and that the applicant's family would suffer extreme hardship if her waiver application is denied. *Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse;[1] tax returns for the applicant and her spouse; W-2 forms for the applicant's spouse; a car purchase agreement; a mortgage interest statement; a tax assessment statement; a settlement statement; an employment letter for the applicant's spouse; statements from friends and the applicant's spouse's aunt; student verification statements for the applicant's children; and a medical statement for the applicant's child. 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

[1] One of the applicant's spouse's statements is in Spanish and is not accompanied by a certified English-language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not consider this statement.

> 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 August 1991 and remained until her departure in November 2005. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated November 17, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in November 2005. 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 or her children 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 is a native of Mexico. *Naturalization certificate*. The applicant's spouse came to the United States as a teenager and currently has few ties to Mexico. *Attorney's brief.* The record does not address his language abilities, or lack thereof, and how this would affect his adjustment to Mexico. 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, that he would be unable to receive adequate care.

The applicant's spouse asserts that that he will lose everything he has gained if he has to go to Mexico. *Statement from the applicant's spouse*, dated December 13, 2006. He states that he wishes his children to continue their education in the United States and that they cannot go very far educationally in Mexico. *Id.* Counsel also asserts that the applicant's children, who are in Mexico with the applicant, have had to adjust to substandard school facilities and education in Mexico. *Id.* While the AAO acknowledges the applicant's spouse's and counsel's claims regarding the hardship being experienced by the applicant's children in Mexico, it notes that the record does not contain documentation that demonstrates the children's lack of educational opportunities. Going on record without supporting documentation is not sufficient to 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)). Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does contains a physician's statement, which indicates that one of the applicant's children has a condition requiring a Nebulizer. *Statement from Saifuddin, Tahir, M.D.*, dated December 8, 2005. While the AAO acknowledges that one of the applicant's children has a health condition, it does not find the record to identify that condition or demonstrate that the applicant's child is unable to receive adequate treatment in Mexico. Further, as previously discussed, the applicant's children are not qualifying relatives for the purposes of this case and the record fails to document how any of the hardships they may be encountering affect their father, the only qualifying relative.

Counsel asserts that the distressed economic state of Mexico should be considered in the assessment of the aggregate hardships that would amount to extreme hardship for the applicant's spouse. *Attorney's brief.* The record, however, fails to include documentation, such as published country conditions reports regarding the economic and employment situations in Mexico, to support counsel's claim. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Mexico. *Naturalization certificate*. The record does not address whether the applicant's spouse has family members residing in the United States. The AAO notes that the record includes a car purchase agreement and mortgage interest and tax assessment statements documenting the various expenses of the applicant's spouse. *Car purchase agreement; Mortgage interest statement; Tax assessment statement*. While the AAO acknowledges these documented expenses, it notes that there is nothing in the record to show that the applicant's spouse would financially suffer as a result of being separated from the applicant, nor does the record show that the applicant would be unable to contribute to her family's financial well-being from a location other than the United States. Furthermore, the record fails to include documentation, such as published country conditions reports, regarding the economic situation and availability of employment in Mexico.

The applicant's spouse states that he deeply loves the applicant, cannot bear the thought of having to be separated from her for a longer period of time and does not think he can go on without her. *Statement from the applicant's spouse*, dated December 13, 2006. Statements from friends and the applicant's spouse's aunt report the suffering of the applicant's spouse as a result of his separation from the applicant. *Statements from friends and the applicant's spouse's aunt*, dated December 2006. While the AAO notes these statements, it does not find the record to provide documentary evidence, e.g., an evaluation of the applicant's spouse by a licensed mental health practitioner or other medical documentation, demonstrating the emotional/mental impact of separation on the applicant's spouse. Going on record without supporting documentation is insufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra.*

While the AAO acknowledges the difficulties faced by the applicant's spouse, 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. 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 he 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.