

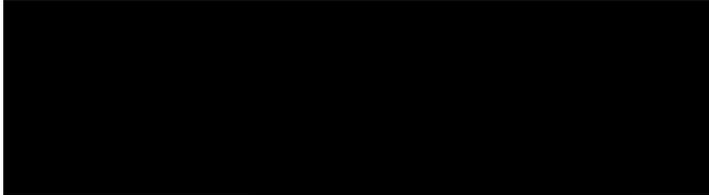
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

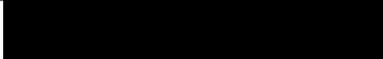
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MAR 10 2010

FILE:



(CDJ 2004 730 333)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

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:



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 his last departure from the United States. The applicant is married to a United States citizen and is the father of three United States citizens. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their 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 his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated February 16, 2007.

On appeal, the applicant's spouse asserts that extreme hardship was established and submits additional evidence. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from a therapist regarding the applicant's spouse; a statement from the principal at the school attended by one of the applicant's children; a statement from the applicant's children's daycare; daycare bill statements; earnings statements for the applicant's spouse; a statement from the applicant; a statement from one of the applicant's children; a statement from the individual who sold the applicant a car; an employment letter for the applicant; a car payment statement; a statement from the applicant's landlord; and a statement of property purchase. 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 with a visa in September 1996 and remained until his departure in February 2006. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated February 9, 2006; *Form I-601, Application for Waiver of Grounds of Excludability*. The applicant, therefore, accrued unlawful presence from February 21, 1999, the date of his 18th birthday, until he departed the United States in February 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 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 or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he 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 she resides in Mexico or 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 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 his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form I-130*. Counsel asserts that the applicant's spouse and her five children have lived in the United States their entire lives and are fully assimilated into the United States culture and lifestyle. *Attorney's brief*. Counsel notes that the cultural adjustment for the applicant's spouse would be enormous and would lead to great anxiety. *Id.* While the AAO acknowledges counsel's statement, it notes that the record does not support his claim. The record contains a statement from a therapist regarding the mental health services being received by the applicant's spouse but does not address how adjusting to a new country and culture would affect her on a psychological level. Counsel also states that the applicant's family would be homeless and financially destitute upon their arrival in Mexico. Counsel requests that the AAO take administrative notice of the severely depressed economic conditions in Mexico that cause many Mexican citizens to seek employment opportunities in the United States. *Id.* Counsel asserts that it is probable that the applicant and his spouse would earn significantly less than the U.S. minimum wage in any job that either one could secure in Mexico. *Id.* The AAO notes counsel's assertions but does not find the record to include documentation, such as published country conditions reports, regarding the economy and employment availability in Mexico. 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 not address the applicant's spouse's language abilities and how that may affect her adjustment to Mexico. The AAO observes that the record does not document whether the applicant's spouse suffers from any medical conditions and, if so, whether adequate treatment is available in Mexico. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she 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 was born in the United States. *Form I-130*. The record does not address what family members she has in the United States. The applicant's spouse states that it is financially impossible for her raise five children as a single parent. *Statement from the applicant's spouse*, dated November 8, 2007. She notes that she works as a waitress and, during that time, sends her children to daycare, which is an added expense. *Id.* The record includes bills and a statement showing her monthly childcare costs to be \$1393.00. *Statement from Hunters House Group Home*, dated October 12, 2007; *Daycare bill statements*. The record also includes earnings statements for the applicant's spouse showing her earnings from her job as a waitress to average less than \$100 a week. *Earnings statements*. The applicant's spouse notes she is unable to make payments on her mobile home and car. *Statement from the applicant's spouse*, dated March 11, 2007. The record includes a statement from the individual from whom the applicant was purchasing a car noting the applicant's car was placed back into his name when the applicant went to Mexico. *Statement from car seller*, dated March 9, 2007. The record also includes a statement from the owner of the applicant's mobile home indicating that the applicant's spouse has been unable to remain current on her payments and that it will be necessary to sell the property if she is unable to pay. *Statement from landlord*, dated March 9, 2007. While the record lacks

documentation, such as published country conditions reports, that establishes the applicant would be unable to assist his family financially from outside the United States, the AAO notes that the applicant's spouse's income is significantly below the federal poverty guidelines for a family of four.¹

The applicant's spouse is currently receiving outpatient treatment services at a community counseling center. *Statement from* [REDACTED], dated October 8, 2008. According to the statement provided by a therapist at the center, it is evident that the applicant's spouse is often overwhelmed with parenthood and financial concerns, while recovering from mental health issues. *Id.* It is the therapist's belief that support from the applicant is essential for the recovery of her mental health, and reunification of her family would reduce or eliminate many of the emotional issues surrounding the applicant's spouse's well-being. *Id.*

Based on the record before it, the AAO finds that the applicant has established that his spouse would experience extreme hardship if his waiver application were to be denied and she remained in the United States. However, as the applicant has failed to establish that his spouse would also suffer extreme hardship if she joined him in Mexico, he has not demonstrated that his inadmissibility would result in extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act. 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.

¹ Although the applicant's spouse states that she is caring for five children, the record includes documentation establishing the birth of only three children.