

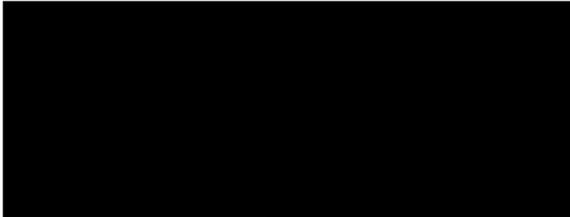
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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MAR 10 2010

FILE:

(CDJ 2004 773 081)

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:

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 and child are U.S. citizens 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 4, dated October 23, 2006.

On appeal, the applicant states that she is submitting new evidence of the extreme hardship that her family is suffering and how this separation is destroying their lives. *Form I-290B*, received November 23, 2006.

The record includes, but is not limited to, psychological evaluations of the applicant and her family, a medical record for the applicant's daughter, and statements from the applicant and her 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 January 2003 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 or her child 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 was evaluated by a psychologist who states that the applicant's spouse no longer feels at home in Mexico, he could not make a living there, and he would be considered a gringo and face prejudice. *Psychological Evaluation of the Applicant's Spouse*, at 2, dated November 17, 2006.¹ The psychologist also reports that the applicant's spouse does not want his child to be brought up in Mexico. *Id.* However, the record does not contain documentary evidence that establishes that the applicant's spouse could not earn a living in Mexico or that he would be considered a gringo and experience prejudice. Neither does the record demonstrate how the applicant's spouse would be affected if he were to

¹ The AAO notes that the record also includes statements from the applicant and her spouse and a medical record for their daughter. These documents are in Spanish. They will not be considered as they are not accompanied by translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

relocate to Mexico and raise his child there. There is no other evidence of hardship presented. 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 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 psychologist who evaluated the applicant's spouse states that his whole life has been turned upside down, he cannot rest, he is preoccupied with the separation, he has lost concentration, he has lost weight and he hates returning to an empty house; he sends money to his family and this is causing a financial hardship; he does not want his U.S. citizen child to be brought up in Mexico; his daughter would experience psychological hardship if separated from the applicant; separation from one or two parents between six months and six years of age can cause emotional and irreparable harm, and some damage seems to have occurred; separation would cause irreparable damage to the applicant, her spouse and her child; this case projects excessive harm and severe problems to the whole family on financial, emotional and familial levels; and the applicant's spouse qualifies for an Adjustment Disorder with Mixed Anxiety and Depressed Mood diagnosis. *Psychological Evaluation of the Applicant's Spouse*, at 2-3. The psychologist notes that the applicant's spouse's symptoms began within three months of separation with significant impairment in social or occupational functioning, his adjustment disorder will be considered chronic if his symptoms last longer than six months, and his symptoms would remit if the stressor of separation were removed. *Id.* at 3.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation fails to reflect the detailed analysis that normally supports a mental health diagnosis, thereby diminishing its value to a determination of extreme hardship. It finds the assessment to lack any discussion as to the basis on which the psychologist reached her conclusions or how the applicant's spouse's symptoms are affecting his ability to function. Further, the psychologist focuses, in significant part, on the impact of separation on the applicant's child without indicating how her emotional hardship is affecting her father, the only qualifying relative. While the psychologist also reports that the applicant's spouse is supporting his family in Mexico and is experiencing financial hardship as a result, the AAO finds the record to lack the documentation necessary to support this claim. 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)).

The applicant's daughter, who is living with the applicant in Mexico, was evaluated by a psychologist who states that she is in rebellion and each day is worse, she has disturbed sleep at night, she is still using diapers and frequently gets sick; she is anxious; she wants a close family and loves to be with both parents in the same home; she believes that her father is responsible for letting her mother and her go to Mexico; she wants to live with her father but does not want to leave her

mother because she fears the police will take her mother; the applicant's depression has been transmitted to her; the first six years are extremely important in a child's development; and her future personality could be affected. *Psychological Evaluation of the Applicant's Daughter*, at 1-2. The AAO acknowledges that the applicant's child is suffering emotionally in Mexico as a result of being separated from her father, but does not find the record to establish how the emotional hardship she is experiencing is affecting her father, the only qualifying relative. There is no other evidence of hardship presented. 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 remains 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.