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U.S. Citizenship
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HL

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 22 2010

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:



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, 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 (Ciudad Juarez), 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 is the spouse of a lawful permanent resident and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated January 26, 2007, the district director found that the applicant failed to establish extreme hardship to her lawful permanent resident spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Brief dated February 23, 2007, counsel states that the applicant's spouse has been separated from the applicant for seven years and during those seven years has experienced emotional, financial, and physical hardship as a result of the applicant's inadmissibility.

The record indicates that the applicant entered the United States without inspection in February 1994. The applicant remained in the United States until July 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until July 2000, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her July 2000 departure.¹ Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

¹ The AAO notes that as of July 2010 the applicant will no longer be inadmissible under section 212(a)(9)(B)(II) of the Act, assuming she remains outside the United States.

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.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the only relative that qualifies is the applicant's spouse. Hardship to the applicant or her children is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). Although the present case did not

arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of hardship includes a brief; financial documentation regarding the applicant’s spouse’s home, business, and taxes; and an article about education and immigration in Mexico.

In a brief dated February 23, 2007, counsel states that all of the applicant’s spouse’s family, except for his wife and children, live in Marietta, Georgia in close proximity to each other. He states that the applicant’s spouse’s parents are elderly and the applicant’s spouse wants to spend as much time as he possibly can with them. In addition, counsel states that the applicant’s spouse owns a business and employs ten U.S. citizens in Georgia. He is also a community leader and a founder of the church he attends. Finally, counsel also states that by traveling back and forth to Mexico, the applicant’s spouse is jeopardizing his immigration status. The AAO notes that in support of these claims counsel submits a settlement statement for the home he owns in Georgia, his business license, Form 1099 Tax Statements for independent contractors working with his business, and copies of the U.S. passports, naturalization certificates, and lawful permanent resident cards of his family members in the United States. In addition, in a letter dated February 23, 2007, the pastor of the applicant’s spouse’s church states the applicant has been an active member of their congregation since 1989 and helped to construct the church building. The AAO finds that the applicant has shown that he would suffer extreme hardship upon relocating to Mexico to be with his wife and children because of his significant ties to the United States, including his family ties, his economic ties, and his community ties.

However, the applicant has not shown that her spouse would suffer extreme hardship as a result of temporary separation. In his brief, counsel states that the applicant’s spouse has been

separated from the applicant and his three children for seven years. He states that during these seven years the applicant's spouse has accrued a great financial burden in travel expenses to Mexico and in supporting two households. Counsel also states that the applicant's spouse is suffering emotionally in not being able to provide his children with an education in the United States and in not being able to play an active role in raising his children. In support of these statements counsel submits an article from *The Herald* (Mexico Edition) entitled, "Better Schools is Part of the Solution" and dated December 28, 2006. The article states that the Mexican educational systems function poorly. The AAO notes that counsel did not submit any other documentation in support of his claims. The record does contain copies of the applicant's spouse's tax returns, but without further financial documentation these do not establish that the applicant's spouse is struggling financially because of separation. Furthermore, no details, specifics, and/or documentation related to the emotional suffering of the applicant's spouse were submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 must submit documentation to support any claims of hardship.

The AAO finds that although the applicant has shown that her spouse would suffer extreme hardship as a result of relocating to Mexico, she has not shown that he would suffer extreme hardship as a result of separation that is likely to last less than one year. Thus, 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.