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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

[redacted]

H6

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: MAY 03 2010

(CDJ 2004 843 112)

IN RE: [redacted]

PETITION: 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 PETITIONER:

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 and 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 naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.[1]

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 April 9, 2007.

On appeal, the applicant's spouse asserts that she would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) and attached statement from the applicant's spouse.*

In support of these assertions the record includes, but is not limited to, a brief from the applicant's spouse; Take-Home Instructions from the Presbyterian Hospital of Dallas Emergency Room; printed material on menorrhagia; a baptismal certificate; an insurance claim; parking, airline ticket, and baggage claim receipts; a statement from the applicant's parents; a medical letter relating to the applicant's spouse; and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes several documents in the Spanish language unaccompanied by certified English-language translations. Accordingly, the AAO will not consider these documents. *See* 8 C.F.R. § 103.2(b)(3).

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-
> >
> > . . . .

[1] The applicant states on his Form I-601, Application for Waiver of Grounds of Inadmissibility, that he has a lawful permanent resident mother and a lawful permanent resident father. The AAO observes the record does not include documentation regarding the lawful status of the applicant's parents. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). As such, the AAO will not consider the applicant's parents to be qualifying relatives for the purposes of this proceeding.

> (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 without inspection in October 1999 and remained until his departure in January 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated January 18, 2006. The applicant, therefore, accrued unlawful presence from October 1999 until he departed the United States in January 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his January 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 is 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 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 travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form I-130, Petition for Alien Relative*. The record does not address whether she has any familial or cultural ties to Mexico, nor does the record address her language abilities and how that may affect her adjustment to Mexico. A medical letter included in the record notes that "[redacted] has a history of abnormal pap smears and requires medical follow-up every six months, with the potential for further tests or procedures if a problem is detected. *Statement from* [redacted], dated February 2, 2006. While the AAO acknowledges this statement, it notes that the record is unclear as to whether "[redacted]" is the same person as "[redacted]" the applicant's spouse. Additionally, the record fails to include published documentation, such as country conditions reports, that establish that adequate medical care would be unavailable to the applicant's spouse in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of 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 spouse states that if she were to accompany the applicant to Mexico, she would be faced with an impossible situation. She asserts that Mexico has a minimum wage workforce, that her family's economic standing would suffer and she would not be afforded the opportunities she has in the United States to own a home, further her education, and continue her growing business. *Brief from the applicant's spouse*. While the AAO acknowledges these statements, it notes that the record fails to include published country condition reports to support the applicant's claims of financial hardship upon relocation. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). 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 Mexico. *Approved Form I-130, Petition for Alien Relative*. The record does not address what family members she may have in the United States. The applicant's spouse states that in November 2006 and again in May 2007, she was treated for stress-related illness relating to her separation from the applicant. *Brief from the applicant's spouse*. While the record includes Take-Home Medical Instructions from the Presbyterian Hospital of Dallas Emergency Room for the applicant's spouse dated November 12, 2006 and printed material on menorrhagia, these documents do not address the cause of the applicant's spouse's medical problem or whether it was caused by stress related to her separation from the applicant. *Take-Home Instructions from the Presbyterian Hospital of Dallas*

Emergency Room; Printed material on menorrhagia. The record contains no documentary evidence of the May 2007 medical emergency noted by the applicant's spouse. The applicant's spouse states there is a psychological effect of being forcibly separated from her life's partner and that she has moved to El Paso as their continued separation was too much to bear. *Brief from the applicant's spouse.* While the AAO acknowledges this statement, it notes the record does not include any documentation from a licensed mental health professional regarding the psychological condition of the applicant's spouse. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of 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 spouse claims that she and the applicant have started their own Dallas restaurant business, which is now being operated by their extended family, and that, in the applicant's absence, she might lose the restaurant. However, the record fails to support the applicant's spouse's claim as it contains no documentation to establish that the applicant and his spouse have opened a restaurant or that this business is experiencing financial difficulties. The applicant's spouse also states that, prior to her move to El Paso, she incurred travel expenses. While the record includes parking, airline ticket, and baggage claim receipts documenting travel between Dallas and El Paso, Texas and related expenses, the record fails to include tax statements or W-2 forms showing the income for the applicant's spouse. Furthermore, the record does not include documentation, such as mortgage/bill statements, utility bills, or credit card statements, regarding the additional expenses of the applicant's spouse. Accordingly, the AAO is unable to determine the extent to which the applicant's spouse is experiencing financial hardship in the United States.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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 her separation from the applicant. However, the record does not distinguish her situation, if she 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 his spouse if she were to reside in the United States.

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.