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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

H6

FILE:

[REDACTED]  
(CDJ 2004 741 457)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

MAY 05 2010

IN RE:

APPLICATION:

[REDACTED]  
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 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 his last departure from the United States. The applicant's spouse and child are U.S. citizens and he 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 November 6, 2006.

On appeal, counsel claims that the applicant's spouse would experience extreme hardship if the applicant were refused admission to the United States. *Memorandum in Support of Appeal*, at 1, dated December 7, 2006.

The record includes, but is not limited to, counsel's memorandum, medical records for the applicant's family, and statements from the applicant's spouse and friends/family members. 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 May 2000 and departed the United States in November 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 his November 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 his 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 she resides in Mexico or in the United States, as she 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. Counsel states that the applicant's spouse would not have access or the ability to pay for medical care in Mexico, she also has the responsibility to care for her son's medical needs, she would suffer due to separation from her parents, she feels a cultural obligation to care for her parents, her parents' health conditions would make it impossible to visit her in Mexico, she would not have the money to visit them in Wisconsin, and she would not be able to find comparable work in Mexico. *Memorandum in Support of Appeal*, at 1, 3.

The applicant's spouse states that the only place the applicant has to live in Mexico is his family's rural farm, there is no running water or heat, the electricity goes out periodically without warning, the nearest clinic is 20 miles away and the nearest hospital is about three hours away, there is no work available at the farm, she and her son would not have health insurance in Mexico or the money to pay for medical care, and the level of care they need would not be available or very difficult to access. *Applicant's Spouse's Statement*, at 1-3, dated December 7, 2006.

The record reflects that the applicant's spouse was diagnosed with cervical dysplasia and was scheduled to undergo a LEEP procedure to remove abnormal cells from her cervix. *Second Letter from* [REDACTED], dated September 21, 2006. The record does not indicate that the LEEP procedure was unsuccessful. The record also reflects that the applicant's son has bronchospasm with reactive airway disease for which he receives daily Pulmicort treatment as well as Albuterol treatment for cough and shortness of breath and wheezing, and he has mild to moderate eczema. *Letter from* [REDACTED], dated May 19, 2006.

The record does not include supporting evidence reflecting the conditions of the town that the applicant and his family would be living in, the severity of the applicant's spouse's medical problem, whether her son could get adequate treatment in Mexico or the hardship that she would encounter due to her son's hardship. The record does not include supporting documentation that establishes that the applicant or his spouse could not obtain employment in Mexico to support themselves. 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)). However, the AAO notes that the applicant's spouse would be relocating with a child who has a chronic health condition, would lose the medical provider who has dealt with her son's health condition from birth and would be seeking treatment for her son in a healthcare system with which she is unfamiliar and in which she has no confidence. When these additional factors are considered in combination with the normal hardships of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she 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. Counsel states that the applicant's spouse has had a number of recent health problems, she underwent an electrosurgical excision procedure after the discovery of precancerous cells in her cervix, she is undergoing regular examinations to monitor this condition, she also has the responsibility to care for her son's medical needs, she is currently living with her parents due to lack of financial stability, her parents cannot house her for the long-term due to their own serious health problems, the applicant's spouse and child would be completely devastated if the applicant was forced to stay in Mexico, they have been without his financial and emotional support, and the applicant's spouse has consolidated her debt in order to keep up with her bill payments. *Memorandum in Support of Appeal*, at 1-2. The record reflects that the applicant's spouse was diagnosed with cervical dysplasia and was scheduled to undergo a LEEP procedure to remove abnormal cells from her cervix. *Second Letter from* [REDACTED]. The record does not indicate that the LEEP procedure was unsuccessful.

The applicant's spouse states that the pressures of working and parenthood would be overwhelming, the applicant shares fully in caring for their son, her mother cares for her son but her mother has health issues, she cannot afford to pay for child care, she only makes \$9 per hour, their son needs daily breathing treatments and frequents trips to the doctor, it has been very stressful finding others to help with their son's needs, she is supposed to care for her parents but they are taking care of her, her parents have medical problems including diabetes and hyperlipidemia, and her father is a veteran who suffers from post-traumatic stress. *Applicant's Spouse's Statement*, at 1-2.

The record reflects that the applicant's spouse's mother has hyperlipidemia, hypothyroidism, diet-controlled diabetes and psoriasis. *Letter from* [REDACTED], dated November 22, 2006. The record reflects that the applicant's spouse's father has diabetes, hyperlipidemia, benign paroxysmal, chronic anxiety/PTSD symptoms and insomnia. *Letter from* [REDACTED] [REDACTED] dated November 22, 2006. The record does not establish that the applicant's spouse's parents' health problems limit their ability to physically and financially support the applicant's spouse. The record does not include documentary evidence of the parents' financial status or their age, and their medical statements do not indicate the severity of their various conditions or how their conditions affect them on a daily basis.

The applicant's spouse's parents state that the applicant's spouse has been struggling to stay afloat with mounting medical and financial problems, she has been stressed to the maximum, and her difficulties have affected every aspect of their lives. *Statement from Applicant's Spouse's Parents*, dated November 29, 2006. The record includes several other statements from family and friends of the applicant that report the struggles of the applicant's spouse and child. However, the record indicates that the applicant's spouse is receiving assistance from her parents. It also indicates that the applicant's brothers live near the applicant and their parents and does not establish that they are unable or unwilling to help their sister. The documentation submitted regarding the applicant's spouse's debt consolidation is unclear with regard to how much she pays per month. The record lacks any evidence from the applicant's spouse's physician or other medical professional as to the status of the applicant's spouse's health, physical or emotional, in the applicant's absence. 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)). While the record reflects that the applicant's spouse would encounter difficulties without the applicant, it contains insufficient evidence to establish that the applicant's spouse would suffer extreme hardship if she remained 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.