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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:

(CDJ 2002 749 432)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: MAY 05 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:

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 Khew

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 is a U.S. citizen and his child and stepchild (children) are U.S. citizens. 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 August 31, 2006.

On appeal, the applicant's spouse details the hardship that she is experiencing as a result of the applicant being in Mexico. *Applicant's Spouse's Second Statement*, at 1-2, dated September 11, 2006.

The record includes, but is not limited to, statements from the applicant's spouse and a physician's letter for the applicant's 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 April 2001 and departed the United States in April 2004. 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 April 2004 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 children 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. The AAO notes that the record does not contain a birth certificate or other reliable evidence of the applicant's older child. As such, any hardship that she may experience and its effect on the applicant's spouse will not be considered. 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. The applicant's spouse states that Mexico has a completely different lifestyle, it would be very difficult for her children to adjust, the applicant currently makes 600 pesos a week, she would not be able to work in Mexico, she would be illegal and would not have the money to go through the immigration process, she would always have to worry about feeding and clothing her children, she does not want her children to suffer, her life is in the United States, and she has car payments and bills so she cannot just pick up and leave everything. *Applicant's Spouse's Second Statement*, at 2. The record does not include supporting documentation for these claims. The record does not contain country conditions information on Mexico that establishes that the applicant's spouse would be unable to find employment or afford the immigration process. It also fails to demonstrate the hardship that her children would suffer and the resulting hardship to her or that she would be unable to resolve her car payments and bills. The

applicant's spouse's physician states that the applicant's spouse has hypothyroidism and is being treated with Synthroid, she has hypertriglyceridemia and obesity, she has issues with depression and anxiety as a result of being overwhelmed and stressed, she works full-time, and she was born and raised in Nebraska. *Letter from* [REDACTED] The record is not clear as to the severity of the applicant's spouse's medical problems. Neither does it establish that she could not receive treatment in Mexico. 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 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. The applicant's spouse states that she has two daughters, they have only seen the applicant for two weeks this year, it is very expensive and very far to travel alone with her two children, both her children love the applicant very much and want to be with him, the separation has been financially and emotionally difficult, and she does not know how much more she can take. *Applicant's Spouse's Second Statement*, at 2. The applicant's spouse states that there is not enough income to pay for all of the bills; she has needed to borrow from family and friends to pay the bills; and she cannot provide for all of her family's needs such as special activities, food and clothing. *Applicant's Spouse's First Statement*, at 1-2, dated November 17, 2005. The record does not include support documentation of the financial and emotional hardship that the applicant's spouse is experiencing or of any hardship that her children are experiencing and the resulting hardship to her. The applicant's spouse's physician states that the applicant's spouse has hypothyroidism and is being treated with Synthroid, she has hypertriglyceridemia and obesity, she has issues with depression and anxiety from being overwhelmed and stressed, she works full-time, her visiting the applicant one or two weeks a year is causing a great amount of stress and depression, and her ability to work full-time and take care of her family will be impeded if her depression/anxiety worsens. *Letter from* [REDACTED] The record is not clear as to the severity of the applicant's spouse's medical problems.

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 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 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.