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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[redacted]

#6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAY 17 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Rhew

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 his last departure from the United States. The applicant is the spouse of a U.S. citizen and has three U.S. citizen stepchildren. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated March 28, 2007, the district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a letter dated August 27, 2007, the applicant's spouse states that she is suffering without the applicant as the sole provider for her family and that she is not able to meet her family's needs financially.

In the present application, the record indicates that the applicant entered the United States without inspection in 1995. The applicant remained in the United States until February 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until February 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 2006 departure from the United States. 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 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 relative that qualifies is the applicant's spouse. Hardship to the applicant or his stepchildren 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 three letters from the applicant's spouse, two letters from the applicant's stepchild, a letter from the applicant's spouse's employer, a letter from the applicant's employer submitted on three different dates, various personal reference letters for the applicant, and financial documentation, including an eviction notice.

As stated above, the applicant's spouse asserts that she has been suffering financially since the applicant's departure. In two of her letters, one dated August 27, 2007 and the other dated August 6, 2007, she states that she has had to borrow money from friends and family in order to pay her expenses. In a letter dated February 4, 2006, the applicant's spouse states that before she married the applicant she was in two very unhealthy relationships that resulted in her having two children with two different men. She states that both men are now in prison and are no help to her or her children. The applicant's spouse states that the applicant saved her life by being a true family man, helping her and her children through the hardest parts of therapy. She states that the applicant treats her and her children with dignity and respect and that he cared for their family which was abused and on its way to destruction. The applicant's spouse states further that the applicant has never raised his hand to her or her children, that he has given her hope for a good life, and that their home is now filled with love, kindness, and no fear. She states that these factors are very important to her because of the abuse her family endured, "at the hands of a madman." The applicant's spouse states that she is very afraid that the emotional damage will be very hard if the applicant does not come home, that the applicant is a big help in her life, and that he pays for the mortgage and all the utilities on their home.

In an undated letter, the applicant's stepson states that the applicant's absence would be extremely hard for his mother financially, emotionally, and spiritually. He states that the applicant has been the backbone of his family and is kind, loving, and hardworking. In a second undated letter, the applicant's stepson states that being separated from the applicant has been the

most stressful and emotionally draining time of his and his mother's life. He states that they have fallen further and further behind in their bills and that he has had to stop going to school to get a fulltime job. He also states that he is worried about his mother's health.

In a letter dated August 29, 2007, the applicant's spouse's employer, [redacted] at the Colorado Mental Health Institute of Pueblo, states that since the applicant's spouse's husband has been gone she has noticed a negative change in the applicant's spouse and is worried about her. [redacted] states that at the mental health institute their staff is taught to quickly judge the mental condition of a person and that it has been her opinion that for several months the applicant's spouse has been losing her ability to function and is totally overwhelmed. She states that before the applicant returned to Mexico his spouse was a positive, helpful, and good worker who seemed to have her priorities of work and family in good balance. Now, [redacted] states that the applicant's spouse is falling apart. She states that the applicant's spouse has been very forgetful on the job and that even switching her to a less critical department has not helped her forgetfulness. She states that the applicant's spouse has had two serious write-ups in the last few months and her job is now in jeopardy. [redacted] states further that she can see how emotionally fragile the applicant's spouse is, in that she is calling out sick all of the time, she is near tears when she is at work, and she is talking with a counselor regularly.

In the letters submitted from the applicant's employer, [redacted], the owner, [redacted] confirms the applicant's employment as foreman for his concrete finishing company. [redacted] states that the applicant has proven himself over and over again to be a very conscientious, dedicated, honest, hardworking, self-starter who gives 110% to any task he undertakes.

The AAO notes that the record also contains an eviction notice, dated April 23, 2007 which states that the applicant's spouse owes $447.00 in late rent and fees. The letter states that the applicant's spouse is constantly late and that if she does not pay her rent in three days she must vacate the premise.

The AAO finds that he applicant has established that his spouse is suffering extreme hardship as a result of separation. The applicant's spouse has a history of being in abusive relationships and as documented by her letters, her stepson's letters, and the letter from her employer, she is suffering extreme emotional hardship since the applicant's departure. In addition, the record shows that she is suffering economic hardship in that she is in danger of being evicted from her home.

However, the AAO cannot find that the applicant has established extreme hardship to his spouse as a result of relocating to Mexico because the record does not contain any statements or documents regarding relocation. The record indicates that the applicant's spouse has three children, two of whom still live with her, and that the fathers of these children are in prison and/or are not part of their lives. The record does not indicate whether these children will stay in the United States or relocate to Mexico upon the applicant's spouse's relocation. 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)). Thus, the AAO finds that the current record does not establish that it would be an extreme hardship for the applicant's spouse to relocate to Mexico.

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(h) 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.