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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

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FILE: [REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

MAY 17 2010

IN RE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 a U.S. citizen daughter. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated October 2, 2007, the district director found that the applicant failed to establish extreme hardship to his qualifying relative 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 Notice of Appeal to the AAO dated October 27, 2007, the applicant's spouse states that she received a letter in August 2007 that the applicant's waiver application had been approved, but then received a denial notice in October. She also states that she feels she was ill informed by her attorney and was not prepared for the outcome of the applicant's visa interview. The applicant's spouse states further that she believes the U.S. immigration laws are unjust. She also states that neither she nor her daughter speak Spanish, so moving to Mexico would constitute extreme hardship. She further contends that the district director's statement regarding the favorable factors outweighing the unfavorable is incorrect.

The AAO notes that the record indicates that on August 4, 2007 the applicant's waiver application was approved. The AAO notes that under 8 C.F.R. 103.5(a)(5)(2), U.S. Citizenship and Immigration Services (USCIS) has the authority to reopen or reconsider an already approved waiver application on its own motion and issue a new decision. The AAO notes that the regulation requires that the applicant be given 30 days to submit a brief if the new decision is unfavorable. Although the director appears not to have allowed the applicant this opportunity prior to denying the waiver application, the applicant has had ample time and opportunity on appeal to address the issues presented in the director's decision denying the waiver application.

The record indicates that the applicant entered the United States without inspection in March 1997. The applicant remained in the United States until December 5, 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until December 5, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 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.

The AAO notes that after the initial approval of the applicant's waiver application, an unsigned letter was received stating that the applicant reentered the United States after his visa interview. The record indicates that a company located in the United States, [REDACTED] was contacted regarding the whereabouts of the applicant. Someone at this company stated that the applicant was working in the United States as a contractor with a company named Crafters. The record also indicates that the applicant's spouse was contacted, but did not return the investigating officer's phone call. It was after this investigation that the applicant's waiver application was reconsidered and then denied.

The AAO notes that if the applicant reentered the United States after having been unlawfully present for more than one year, he would be permanently inadmissible under Section 212(a)(9)(C)(i)(I) of the Act.

Section 212(a)(9)(C)(i)(I) of the Act provides, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1) section 240, or any other provision of law, and

who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C)(ii) of the Act gives the Secretary discretion to consent to the applicant's reapplying for admission. Granting consent to reapply, however, relieves an alien of inadmissibility only if the alien is seeking admission more than ten years after the date of the alien's last departure from the United States.

The AAO finds that the current record is insufficient for a finding of inadmissibility under section 212(a)(9)(C)(i) of the Act as the unsigned letter that initiated the investigation and the

results of the investigation are not in the record. Thus, the AAO will review the decision based on the finding of inadmissibility under section 212(a)(9)(B) of the Act.

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 the applicant's child 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 undated statements from the applicant’s spouse.

The applicant’s spouse states that she will face economic hardship if the applicant is removed because the applicant recently purchased a home in Alabama for their family and supporting two households, one in the United States and one in Mexico, will be too much of an expense. The applicant also states that she believes it would be a violation of her rights as a U.S. citizen to not be able to live with her spouse. In another statement the applicant’s spouse states that while in Mexico the applicant was not working and they were finding it hard to pay their bills. The

applicant's spouse also states that if the applicant must stay in Mexico she will not be able to care for their daughter and will have to work more. She states that the thought of having her daughter be with a babysitter most of the time has caused her a lot of stress.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the current record does not establish that the applicant's spouse's hardship rises to the level of extreme hardship. The applicant must show, through statements and supporting documentation that his spouse will suffer extreme hardship as a result of relocating to Mexico and as a result of separation. As stated above, hardship to the applicant's child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that the hardship to the applicant's child is causing hardship to the applicant's spouse. The applicant's spouse states that relocating to Mexico would be an extreme hardship, but does not provide any details about why relocation would be extreme hardship and where the family would reside in Mexico upon relocation. Moreover, the applicant does not submit any country conditions documentation to support any statements of hardship. In addition, the applicant's spouse states that she and the applicant are very close and that the family is having financial problems as a result of separation, but does not provide documentation to support these statements. The applicant's spouse does not provide details regarding the difference between her life with the applicant in the United States and her life without the applicant in the United States. Furthermore, she provides no supporting documentation to support the statements she has made. In particular, the record does not include financial documentation to provide a full picture of the family's financial situation. The AAO notes that 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)). Therefore, the AAO finds that the current record does not support a finding of extreme hardship as a result of the applicant's inadmissibility.

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.