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U.S. Citizenship
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FILE: CDJ 2004694 220 Office: CIUDAD JUAREZ, MEXICO Date: **AUG 05 2008**

IN RE: Applicant: 

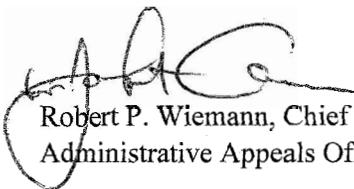
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212 of the Immigration and Nationality Act, 8 U.S.C. § 1182.

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.



Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 35-year-old native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9). The record reflects that the applicant's spouse, [REDACTED] is a U.S. citizen naturalized on February 14, 2003. The applicant entered the United States without inspection in 1998 and remained until 2005, without authorization. She departed voluntarily, and in so doing triggered the inadmissibility bar in section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9). The applicant seeks a waiver of inadmissibility in order to immigrate to the United States on the basis of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her husband.

The officer in charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The officer in charge denied her application for a waiver of inadmissibility, finding that she had failed to establish that her U.S. citizen spouse would face extreme hardship.

On appeal, the applicant's counsel submits a statement maintaining that the applicant's family would face extreme hardship should the waiver application be denied. See Letter from [REDACTED]. The AAO notes that no evidence accompanies the appeal.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 officer in charge found the applicant inadmissible on the basis of her unlawful presence in the United States. The record reflects, and the applicant admits, that she entered the United States without inspection in 1998 and remained here, without authorization, until 2005. The applicant does not dispute the inadmissibility finding. The AAO therefore affirms the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the

Act, 8 U.S.C. §§ 212(a)(9)(B)(i)(II). The question remains whether she is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's U.S. citizen children is also not a permissible consideration under the statute, except as it results in hardship to the applicant's spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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 applicant's husband, _____ is a 48-year-old native of Mexico who became a U.S. citizen upon his naturalization in 2003. He was married to the applicant on March 13, 1998 in Mexico. The couple has four children, born in the United States in 1999, 2000, 2002 and 2004. The applicant, through counsel, claims that her separation from her family is causing her spouse and children extreme emotional hardship. *See* Letter from _____ Specifically, applicant's counsel notes that the applicant's spouse would have to raise the couple's four children on his own or remain here on his own separated from his family. *Id.* Applicant's counsel maintains that the applicant is a "law abiding person in all cases save her entrance into the United States" and that "[h]omeland security is in no way threatened by her presence [in the United States]." *Id.* The AAO notes that the record includes the applicant's birth and marriage certificate, as well as her children's birth certificates. The record also contains two statements from her spouse, in Spanish. The record, however, does not contain any documentary evidence of hardship, such as evidence relating to the applicant's family's financial circumstances, family ties, property, employment, or health. Absent any such evidence in the record, the AAO must find that the applicant has failed to establish that her spouse would face extreme hardship due to her inadmissibility.

The AAO notes that the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States do not amount to "extreme hardship." Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); see also *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). The AAO also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).

The record suggests that the applicant's husband is reluctant to relocate to Mexico. As a U.S. citizen, he is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's husband's concerns in this regard are common to other individuals facing similar circumstances, and do not rise to the level of "extreme hardship." See *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The AAO has evaluated the applicant's husband's hardship claims individually and in the aggregate. The AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.