



U.S. Citizenship  
and Immigration  
Services

Handwritten initials or mark, possibly "V" or "W", with a scribble extending to the right.

[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

Date:

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:

[Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Phoenix, Arizona. 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. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Interim District Director*, dated August 21, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services erred in concluding that the applicant's spouse would not suffer extreme hardship if her waiver were denied. Counsel contends that the denial was dismissive and superficial and failed to take into account all of the facts and circumstances in the application. *Form I-290B*, dated September 19, 2003.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, dated September 18, 2003; copies of records relating to the medical history of the applicant and her spouse; color copies of photographs of the applicant and her family and an affidavit of the sister of the applicant's spouse, dated September 18, 2003. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa during October 1995. On January 28, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). In March 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States. The AAO notes that the applicant overstayed the period of stay authorized by her visitor visa by remaining in the United States for approximately three and a half years.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. See *Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until January 28, 1999, the date of her proper filing of the Form I-485. The applicant is, therefore, 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.

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 the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel contends that the family of the applicant's spouse resides in the United States and his parents and siblings depend on the applicant's spouse for financial and emotional support. *Brief on Appeal of Denial of I-601*, dated September 22, 2003. Further, counsel states that the applicant's spouse is employed as a loan officer, a position that does not exist in Mexico, and he suffers from lower back pain and would, therefore, be unable to obtain employment as a laborer in Mexico. *Id.* at 5.

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment and proximity to extended family members. The AAO notes that, as a U.S.

citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's spouse would experience financial hardship as a result of separation from the applicant. *Id.* Counsel asserts that, should the applicant depart from the United States, the applicant's spouse would no longer be able to financially support his elderly parents and single mother sisters and their children. *Id.* The AAO notes that the extended family members of the applicant's spouse are not qualifying relatives for purposes of section 212(a)(9)(B)(v) proceedings and the record fails to establish that they are financially dependent on the applicant's spouse. Further, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her personal financial well being from a location outside of the United States. *U.S. Department of State Background Notes: Mexico 1999. See also Network Against the Extreme Poverty, Civil Association.* Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The record reflects that the applicant's spouse suffers from acute pyelonephritis and hyperlipidemia. *Letter from Enrique Cifuentes, MD*, dated September 12, 2003. The submitted physician's letter indicates that the medical condition of the applicant's spouse is treated with a low fat diet and medications. The letter further states that the applicant provides her spouse with dietary and medical support. *Id.* The record fails to establish that the presence of the applicant is required in the United States for the successful treatment of her spouse's medical condition. Based on the record, the applicant's spouse can care for himself by regulating the food he eats and regularly taking his medication(s) as prescribed. The AAO notes that the record also establishes that the applicant suffers from depression, migranes and kidney infections. *Prescription Note*, dated September 4, 2003. As previously stated, hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Further, the record fails to establish that the applicant's conditions cannot be successfully treated outside of 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. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.