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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: PHOENIX, ARIZONA

Date: MAR 01 2004

IN RE: Applicant: [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]

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found to be inadmissible to the United States (U.S.) 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 record reflects that the applicant is the spouse of a U.S. citizen and that he has three U.S. citizen children. The applicant initially entered the United States without inspection in 1986. He subsequently departed and reentered the U.S. with advance parole authorization on two occasions, the last time being on July 23, 2000. The applicant seeks a waiver of inadmissibility in order to remain with his family in the United States.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

On appeal, counsel, asserts that the acting district director abused his discretion by misapplying extreme hardship standards and by not considering the hardship factors in the aggregate in the applicant's case.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

- (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 Secretary, 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 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.

(Emphasis added). The evidence in the record contains several references to the hardship that the applicant's children would suffer if the applicant were removed from the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident **spouse or parent**. Congress specifically does not mention extreme hardship to a U.S. citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered.

Counsel implies on appeal that the fact that the Service granted advanced parole to the applicant subsequent to a Form I-72 request regarding extreme hardship information, amounted to an acknowledgement by the Service that it found extreme hardship to the applicant's wife. The AAO notes, however, that the Form I-72 sent to the applicant clearly states that:

You may not submit an application for waiver at this time as inadmissibility under Section 212(a)(9)(B)(i)(I) of the Act would only be triggered by your departure from the United States. Further, if you are able to demonstrate that you would be likely to be granted a waiver of your inadmissibility and you are therefore granted advance parole, this does not mean that you will be granted such a waiver in the exercise of discretion at the time your application for adjustment of status is adjudicated.

The Form I-72, additionally warns that, "[b]ecause departing from the United States will likely subject you to the grounds of inadmissibility set forth in Section 212(a)(9)(B)(i)(I) of the Act, you may wish to withdraw your application for advance parole."

Moreover, the November 26, 1997, Memorandum, entitled, "Advance Parole for Aliens Unlawfully Present in the United States for More than 180 Days," by [REDACTED] Acting Executive Associate Commissioner (Memo), and referred to by counsel, made clear that a Service grant of advance parole status did not confer any waiver of inadmissibility benefits upon the alien. The memo clarified further that an alien who became inadmissible due to his or her departure from the United States had to file an I-601 Application for a Waiver of Excludability, and upon adjudication of that waiver, had to establish extreme hardship to a qualifying relative, in accordance with applicable legal standards. The memo additionally clarified that aliens granted advanced parole would also receive a written warning regarding the possible harsh consequences of departing the United States, to ensure that they were aware of the risks of departure. The AAO notes that the record in the present case reflects that the applicant received the written warning referred to in the Memo.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (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.

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).

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.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals.

Counsel asserts that Mrs. [REDACTED] would suffer a decreased standard of living, the loss of her family support and financial hardship if she moved to Mexico with her husband. The AAO does not find that the generalized statement regarding the effects of Mrs. [REDACTED] separation from her family and regarding the possibility of financial hardship in Mexico establish hardship that is unusual or that goes beyond that usually expected upon the removal of an alien.

Moreover, the AAO notes that the applicant’s wife (Mrs. [REDACTED] indicated in her affidavit that she would remain in the United States with her children if the applicant were removed to Mexico. In addition, the applicant stated in his affidavit that it would be unthinkable to take his family to Mexico because he has no place to live, no work and no future for them in Mexico.

Counsel asserts that Mrs. [REDACTED] has been married to her husband for more than 8 years and that they have three young children together. As a result, counsel asserts that Mrs. [REDACTED] would suffer extreme hardship if her husband’s waiver application were denied based on increased financial and family responsibilities she would need to assume, and based on the emotional effects of separation from her husband.

In support of the assertions regarding financial obligations, counsel submits copies of the couple’s joint home mortgage and car loan payment obligations. Counsel also submits copies of salary and tax information for both the applicant and his wife. In addition, Mrs. [REDACTED] asserts that she would have to get a second job or ask for public assistance in order to meet her financial obligations without the help of her husband. In turn the applicant’s wife asserts that she would suffer emotional hardship because she would spend much less time with her children under such circumstances. The record also contains an August 2002, therapist letter stating generally that Mrs. [REDACTED] is experiencing physical and emotional stress due to the possibility of her husband’s removal from the United States.

The evidence submitted fails to establish that the applicant’s wife would suffer hardship beyond that normally experienced by families upon removal of an alien, if her husband were removed from the United States. The August 2002 therapist letter fails to establish that Mrs. [REDACTED] has any psychological condition or symptoms that would cause her to suffer hardship beyond that normally suffered upon removal of a family member. Moreover, the record indicates that Mrs. [REDACTED] is gainfully employed as a full-time secretary at a law firm, and that she earns approximately \$30,000 a year. The family expense evidence submitted on appeal reflects that the applicant and his wife pay approximately \$732.00 a month in home mortgage payments and that they have approximately one year of \$422.00 a month payments left for a 1999 Dodge van. Although evidence of the purchase of a 1999 Dodge Ram truck was also submitted, the evidence contained no repayment information. Based on Mrs. [REDACTED] salary, she appears to earn enough money to support her family. Moreover, the record demonstrates that Mrs. [REDACTED] family lives near her and that her mother and other family members provide childcare and support to Mrs. [REDACTED]

The AAO notes that in *Shoostary v. INS*, 39 F.3d 1049, 1051, (9th Cir. 1994), the Ninth Circuit Court of Appeals stated that, “[t]he 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 Ninth Circuit stated further that the extreme hardship requirement “[w]as not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.” *Id.* Moreover, 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 Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if his waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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.