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Office: LOS ANGELES, CA Date: AUG 22 2006

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility.

The district director found that based on the affidavits and evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated November 17, 2004.

On appeal, the applicant asserts that the allegations made by his spouse concerning his physically and verbally abusing her and their son were determined unfounded by a Judge in California. He also states that his spouse cannot support herself and their child financially and that if he were removed from the United States his spouse would become financially dependant on the government. *Form I-290B*, dated January 24, 2005.

The record includes a letter from the applicant's U.S. citizen spouse requesting that his application for adjustment be rescinded. The applicant's spouse states that the applicant physically and verbally abused her and their child. She also submits a Petition for Divorce filed on August 4, 2003 and a letter from the domestic violence shelter where her and her son resided for a month. The AAO finds that in the present case, the director failed to take action in regards to this letter.

The record indicates that the applicant entered the United States without inspection in 1992. The applicant remained in the United States until July 1999. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act until July 1999, the date he departed the United States. In applying for adjustment, the applicant is seeking admission within 10 years of his July 1999 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.

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 himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

On his Form I-290B the applicant states that his spouse cannot support herself and their child financially and that if he were removed from the United States his spouse would become financially dependant on the government. However, the applicant submits no documentation to support his claims that his spouse is dependant on his income. Furthermore, the applicant's spouse submitted a statement and documentation to show that she is in the process of obtaining a divorce from the applicant and that the applicant had physically and verbally abused her and their child. The applicant's spouse also requests that the applicant's adjustment application be rescinded. Therefore, the AAO finds that because the applicant's spouse is obtaining a divorce from the applicant and no longer supports his adjustment application, there cannot be a finding of extreme hardship to the applicant's spouse as a result of the applicant's removal from 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.

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.