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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: PHOENIX

Date: MAR 01 2006

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the 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 and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a lawful permanent resident of the United States and seeks a waiver of inadmissibility (Form I-601) in order to reside in the United States with her family.<sup>1</sup>

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her lawful permanent resident spouse. The application was denied accordingly. *Decision of the District Director*, dated March 30, 2004.

On appeal, counsel asserts that the district director erred in denying the applicant's waiver request because the evidence in the record had established extreme hardship to her spouse. *Notice of Appeal, (Form I-290B)*, dated April 30, 2004. Counsel had indicated on the Form I-290B that a brief and/or additional evidence would be submitted within thirty days; however, the record does not contain a brief or additional evidence. 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

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<sup>1</sup> The record reflects that some of the evidence in the record is intended to address hardship to her three children. (The record is unclear as to the citizenship of the children.) However, under the statute, hardship that the applicant or her children may face is not relevant to a determination of her eligibility for the waiver sought.

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant entered the United States at a port of entry in Arizona, on October 28, 1995, through the use of a Border Crossing Card. She was authorized to remain until November 7, 1995. The applicant remained beyond the period of authorized stay and subsequently filed an Application for Adjustment of Status on December 7, 1999. The application was submitted on the basis of an approved Petition for Alien Relative (Form I-130), filed by the applicant's spouse. Subsequent to the submission of the application and petition, the applicant departed the United States on an unspecified date between late November 2000, and early 2001, pursuant to a grant of advance parole, returning to the United States on March 5, 2001.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized 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, until the filing of her I-485 on December 7, 1999. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her late 2000/early 2001 departure from the United States. 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 himself 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 Board 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.

Although counsel has not elaborated on the basis of the appeal through the submission of a brief, a review of the assertions on the Form I-290B reveals that counsel takes issue with the district director's conclusion that the evidence did not demonstrate the necessary hardship to the applicant's spouse. However, the AAO's review of the evidence in the record does not result in a finding that the denial of the waiver was in error.

The extreme hardship the applicant's spouse would allegedly suffer arises principally from the loss of the applicant's contributions to the family unit. According to the various affidavits and documentary submissions, the applicant's spouse depends upon her to maintain the family home and assist with raising the couple's children.<sup>2</sup> The evidence consists of the following principal documents: 1) a statement from the applicant; 2) a letter from the applicant's spouse; 3) letters from each of the couple's three children; 4) letters from friends and neighbors of the couple; 5) a letter from the pastor of the applicant's church; 6) a letter from the teacher of the applicant's youngest child; and 7) a letter from the applicant's father,

In general, the documents are submitted to demonstrate that if the applicant were unable to remain in the United States it would impose an extreme hardship upon her family members, as she is the parent with the primary child rearing responsibilities, maintains the family home, and offers emotional support to her husband. In addition, some of the evidence is offered to demonstrate the difficulties of life in Mexico. As noted previously, any hardship experienced by the applicant or her children is irrelevant to a determination of her eligibility for the waiver. Thus, viewed in the most favorable light, the evidence can be viewed as supporting the contention that if the applicant were not permitted to remain in the United States, her lawful permanent resident spouse would experience extreme hardship due to the additional responsibilities he would assume relating to child rearing duties and maintenance of the family home. The spouse asserts that he works five days a week, twelve hours a day and that during that time the applicant resolves the family's problems, maintains a stable household and cares for the family. *Statement of* dated September 11, 2002. According to the spouse, if the applicant were required to leave the United States, the children would suffer due to her absence, and the couple's marriage would be destroyed. *Id.* The spouse also asserts that he would suffer emotional hardship due to the separation, particularly as a result of seeing his youngest son suffer. *Id.* The remaining letters from people in the United States are offered to bolster the claim that the applicant is a good neighbor, a good mother, and a contributing member of the community. The letter from the youngest child's teacher seeks to support a conclusion that the separation of the applicant from her child will lead to negative consequences for the child. As noted previously, the hardship to the applicant's children is not a relevant factor for purposes of the waiver. Moreover, the letter submitted by the school, as well as the letters of neighbors and friends offer only generalized assertions, and do not address specific issues relating to the children which would indicate that the applicant's spouse would experience extreme hardship. The documents seem to offer support for granting the waiver as an exercise of discretion as they cite factors relating to the applicant's status as a friendly neighbor and member of the local church community. These factors, however, do not go to the threshold issue of whether the applicant's spouse would experience extreme hardship if she were not granted the waiver.

The evidence in the record is also offered to demonstrate emotional hardship to the applicant's spouse due to the couple's potential separation. Although the evidence does not elaborate upon the nature of the hardship, it is fair to say that it centers on the severing of family ties and the difficulties that would result from the spouse's separation from the applicant.

Finally, the record also contains the letter from the applicant's father, who resides in Mexico, as additional evidence of hardship. The father's letter states that he is troubled by the prospect of the applicant losing her

<sup>2</sup> The record reflects that the applicant has three children, two of whom are now adults: a son, age 24; a daughter, age 22; and a son, age 14. Moreover, all of the applicant's children were born in Mexico and appear to be Mexican citizens.

ability to remain in the United States due to the unfavorable nature of the situation in Mexico. *See Letter from* [REDACTED] dated July 29, 2002. The applicant's father states that the applicant would be unable to live with him in Mexico, as he does not have enough money or space where he lives. *Id.* The applicant's father notes that the local employer has closed and people are moving away from town due to the lack of work. He further notes that if the applicant moves to that town she would be unable to find work. The father urges the applicant to everything possible to resolve her situation as he relies upon the money that she sends to him. He further notes that the applicant's family—in particular, her youngest son—will suffer greatly if she has to depart the United States. While this may describe difficulties that the applicant would encounter upon her return to Mexico, it does not, however, address hardship to a qualifying relative. While it may raise issues that would suggest that the applicants' spouse might have difficulties in Mexico with respect to the employment situation, there is nothing to suggest that he intends to reside there. In any event, whether it would prove to be an actual hardship to the spouse is speculative in nature.<sup>3</sup>

It appears clear from the affidavits in the record that the applicant has a close relationship with her family, and that her spouse would understandably experience emotional hardship due to a separation from his parents and extended family. While the AAO recognizes that the spouse will understandably experience emotional hardship and concern for his family, there is nothing to indicate that his emotional difficulties would be beyond what would be expected in situations involving family members. In terms of his concern for their well-being, it is noted that the applicant's spouse has a good paying job and would presumably continue to provide for his family in Mexico. The AAO further notes that two of the applicant's children are adults and may be in a position to offer assistance to the applicant's spouse in addressing the needs of the youngest sibling. The AAO notes that applicant may have additional family members in the United States, as it appears from the Affidavit of Support submitted in the applicant's case, that the spouse had previously offered to financially support a niece in the United States. *See Affidavit of Support*, dated April 23, 2002. Thus, there may be additional family members in the United States who are able to offer assistance to the applicant's spouse. Finally, the AAO notes that any hardship that the applicant may suffer, in addition to failing to satisfy the requirement of extreme hardship, is also not indefinite in nature. The applicant is subject to a ten-year bar from the United States. Much of that time has already elapsed, and while several years still remain, she will again be eligible to seek admission to 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. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if

<sup>3</sup> It is noted that even were it established that the economic situation in Mexico for the spouse would be difficult, there is nothing that requires the spouse, as a lawful permanent resident, to leave the United States.

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.