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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: OCT 06 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.

A handwritten signature in cursive script, 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 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 in order to reside in the United States with her spouse.

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 July 20, 2004.*

On appeal, counsel asserts that the applicant has demonstrated that her spouse would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, dated August 6, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a copy of the marriage certificate; statements from the applicant's family members; medical records confirming the applicant's pregnancy; copies of the Mexican birth certificates for the applicant and her children; copies of the permanent resident cards for the applicant's children and spouse; a copy of the property deed for the applicant's home; a copy of Next Century Dental Orthodontic financial agreement and loan repayment receipt; employment letters for the applicant's spouse; a statement from Saint John the Apostle Church; copies of family photographs and home; country condition reports on Mexico; and tax statements for the applicant and her spouse. 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 without inspection in 1994. *Form I-485*. The applicant left the United States in 1999. *Form I-601; Attorney's brief*. The record states that the applicant attempted to gain admission to the United States in 1999, that the Service caught the applicant, and that she voluntarily returned to Mexico. *Form I-601*. The record is unclear as to how and when the applicant returned to the United States. The applicant filed her Form I-485 on January 5, 2000. *Form I-485*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until 1999, the date she departed the United States. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her 1999 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 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 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse's eight siblings, mother, and two daughters live in the United States. *Affidavit from the applicant's spouse*. The majority of his family members reside in the

United States, and he has little family currently living in Mexico. *Attorney's brief*. The applicant's spouse was born in Mexico and lived there until he was 18 years old. *Affidavit from the applicant's spouse*. The applicant's spouse has many financial obligations and a good job that he would lose if he left the United States. *Id.* He has mortgage payments and loan payments for his daughter's braces. *Id.* Although the AAO recognizes the applicant's spouse would be financially impacted, the record does not demonstrate that the applicant and her spouse would be unable to contribute to their family's financial well-being from a location outside of the United States. The applicant's spouse's mother lives in the United States and is a diabetic who requires on-going medical supervision. *Id.* The applicant's spouse stated that he is responsible for ensuring that his mother receives adequate medical care and does not want to be separated from her in her current condition; however, the AAO observes that everyone in the applicant's spouse's family helps pay for his mother's medical bills, and the applicant's spouse's siblings take turns bringing his mother to her doctor's appointments and allowing her to sleep at their homes. *Id.* When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse stated that the applicant takes care of all of their household duties, including taking the children to school. *Id.* The applicant's spouse does not believe that he would be able to work so many hours, while taking care of the kids and attending to all of the things that the applicant does. *Id.* At the time of the appeal, the applicant's spouse was two months pregnant. *Attorney's brief; Medical record, Report of Pregnancy, February 2005*. Although the AAO recognizes the additional expense of a newborn, the record does not demonstrate that the applicant's spouse would no longer be able to continue to provide for the applicant and his family from the United States. The applicant would suffer emotionally and financially without his wife. *Affidavit from the applicant's spouse*. 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 spouse 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

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.