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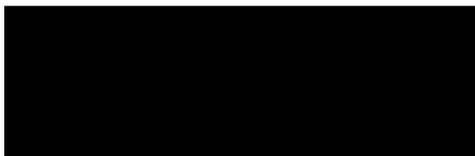
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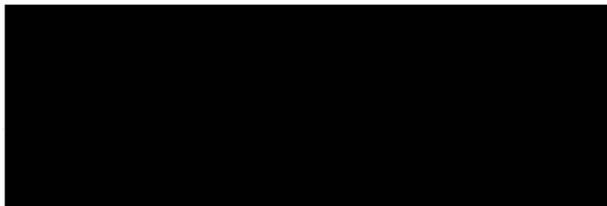
Office: LOS ANGELES, CA (SANTA ANA)

Date: ~~SEP~~ 12 2006

IN RE: ELIZABETH RUIZ CONTRERAS

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The district director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico who entered the United States on October 27, 1988, without inspection, and filed for adjustment of status on August 13, 2001. In order to remain in the United States with her U.S. citizen (USC) spouse and children, the applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for having been unlawfully present in the United States for more than one year, departing, and then seeking admission within 10 years of that departure.

As a result of her unlawful presence and subsequent departure, the director found the applicant to be inadmissible to the United States. *District Director's Decision*, dated March 15, 2005. The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits a brief, a psychological evaluation for [REDACTED] photos, the deed to their house, taxes from 1995 to 2004; the title to their car; and the birth certificates of their USC children, [REDACTED] age 4, and [REDACTED] age, 1. The record also includes the following: a hardship statement from [REDACTED] naturalization certificate; letters attesting to [REDACTED] good character from friends, co-workers, and family; and the couple's marriage certificate. The AAO reviewed the entire record in arriving at 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.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship to the applicant is not a permissible consideration under the statute. In addition, hardship to her USC children can only be considered insofar as it may affect her qualifying relative, in this case, the applicant's USC husband.

The record reflects that [REDACTED] initially entered the United States on October 27, 1988, without inspection. She departed the United States and returned in January 2000. It is unclear from the record when she actually departed the United States but the Form G-325A she submitted indicates that she continuously resided in the United States from at least July 1995 until August 8, 2001. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General 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 filed her adjustment application on August 20, 2001. The applicant accrued unlawful presence from April 1, 1997, the effective date of this section of the Act, until her departure in about January 2000. She accrued more than one year of unlawful presence and then departed the United States. In applying to adjust status, the applicant is seeking admission within 10 years of her January 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

The evidence submitted is insufficient to show that denial of [REDACTED]'s Form-601 would result in extreme hardship to her U.S. citizen husband. Although counsel refers to economic and social problems in Mexico that would make it difficult for the couple to earn a living there, the record does not contain evidence on country conditions for Mexico or how these conditions would affect the applicant and her family. In her brief, counsel cites to a U.S. State Department report, but does not provide the full cite and does not submit the report as evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that [REDACTED] will suffer extreme financial hardship if his wife's Form I-601 is denied, because she earns more than he does and provides health insurance to the family through her job. Counsel does not provide documentation to show that [REDACTED] would be unable to work in Mexico and contribute financially to the family. Counsel also does not provide evidence to show that [REDACTED] would not be able to obtain health insurance through his employer or make adjustments in his life to supplement the loss

of income from his wife. Even if the family's standard of living would be diminished upon denial of the application, this would be insufficient to show extreme hardship to [REDACTED]

Counsel asserts that the [REDACTED] have no family ties to help them transition upon return to Mexico (*See Brief at paragraph 3*), but [REDACTED] did not state this in his hardship statement and counsel does not submit documentation to support this assertion. Also, [REDACTED] Form G-325A indicates that her mother lives in Nayarit, Mexico. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that [REDACTED] will suffer extreme psychological hardship if his wife's waiver application is denied and submits a psychological evaluation from [REDACTED], a clinical psychologist. The AAO cannot give a large amount of weight to this evaluation. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview with [REDACTED]. The evaluation notes that [REDACTED] were referred for purposes of the waiver application. [REDACTED] report was prepared on April 11, 2005, yet the record fails to reflect an ongoing relationship between [REDACTED] in or any other mental health professional. The report does not mention the need for further therapy or medication. For these reasons, little weight can be given to the report prepared by [REDACTED] insofar as it relates to the potential hardship [REDACTED] will suffer if his wife's waiver application is denied. Other than statements from the applicant's husband, in which he notes his love for and emotional attachment to his wife, (*See [REDACTED]' Hardship Statement*), and letters from friends and family, no objective evidence was submitted to supplement [REDACTED] claim of extreme hardship. Although it is clear that her husband would suffer emotionally, if she returned to the Mexico and he remained here, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), describing extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation; and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), holding that that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if he remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme

hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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(h) of the Act, the burden of proving eligibility rests 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.