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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H3

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FILE:



Office: JACKSONVILLE, FL

Date: APR 23 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 Officer in Charge, Jacksonville, Florida. 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge 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, the applicant writes that his wife has undergone and is about to undergo several different surgeries, and that she depends on the applicant for her care and support. He apologizes for overstaying his visa and wishes for the opportunity to remain in the United States with his wife. 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 on a visitor visa on December 18, 1998 with authorization to remain in the United States until May 30, 1999. On May 6, 2003,

the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 29, 2003, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States on April 9, 2004.

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 May 30, 1999 until May 6, 2003, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his 2003 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 § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 not considered in § 212(a)(9)(B)(v) waiver proceedings, except as it may affect the qualifying relative. 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).

In that the applicant's spouse is not required to reside outside the United States based on a denial of the applicant's waiver request, the applicant must establish that his spouse would suffer extreme hardship if she remained in the United States or relocated to Mexico.

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 § 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.

In her letter dated August 12, 2004, the applicant's wife wrote that the applicant was unaware that his departure would cause any subsequent difficulty in obtaining his permanent residence. She wrote that the applicant was not informed of this when he was granted advance parole in 2003. However, as pointed out in the Notice of Intent to Deny the waiver application, the Form I-512 travel document advised the applicant that if he had been unlawfully present, he risked being found inadmissible upon reentry to the United States.

On appeal, the applicant claims that his wife would suffer extreme hardship if she relocates to Mexico to accompany him. The applicant's wife wrote on February 24, 2005 that at her age (then 53), it would be

extremely difficult for her to leave her family in the United States and adjust to life in Mexico. Also, if she left her job she would lose her health benefits, and she feared being unable to obtain proper medical care in Mexico for her chronic health concerns. Beyond the claims made by the applicant on appeal and a copy of the discharge instructions issued to the applicant's spouse following arthroscopic surgery in May 2005, the record does not identify or document the chronic health concerns of the applicant's spouse. Accordingly, the record does not establish that she would not be able to find adequate medical care in Mexico. Neither does the record demonstrate that the applicant's wife would suffer greater than usual stress due to moving to another country, or that she would not be able to find employment, if necessary, in Mexico. Therefore, the evidence does not establish that a move to Mexico would cause the applicant's wife to experience extreme hardship.

The AAO notes that as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant asserts that he takes care of his wife, but there is no evidence that the applicant's wife is incapacitated or requires the applicant's presence in order to carry out her regular activities in the United States. The AAO acknowledges the applicant's wife's anxiety due to the separation; however, nothing in the record establishes that her emotional suffering would be worse than that of other spouses in similar circumstances.

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 wife will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.