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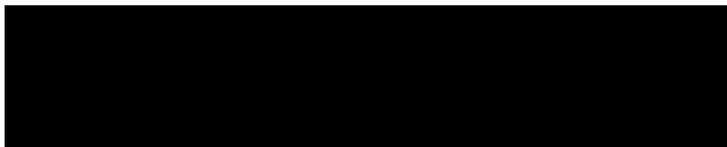
U.S. Department of Homeland Security  
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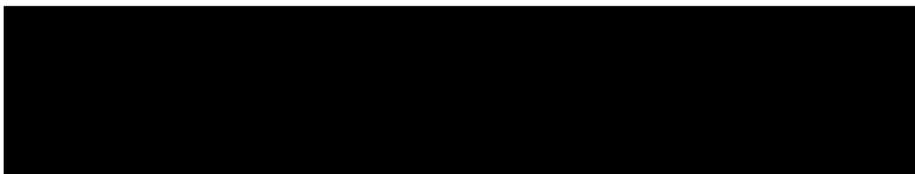
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality 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 waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her husband and two United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 9, 2005.

On appeal, the applicant, through counsel, contends that the District Director "narrowly and erroneously construed the evidence to unreasonably diminish the extreme and unusual hardship [the applicant's] U.S. citizen family will undoubtedly suffer should [the applicant] not be allowed to adjust status." *Form I-290B*, filed December 7, 2005.

The record includes, but is not limited to, counsel's brief, birth certificates for the applicant's United States citizen children, and a psychological evaluation by [REDACTED], regarding the applicant and her husband's psychological health. The entire record was reviewed and considered 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.

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on a B2 nonimmigrant visa on May 12, 1999, with authorization to remain in the United States until November 11, 1999. On August 24, 1999, the applicant married [REDACTED] a lawful permanent resident, in Arizona. On August 22, 2000, the applicant's husband filed a Form I-130 on behalf of the applicant. On April 1, 1999 and September 8, 2000, the applicant's two children were born in Arizona. On February 1, 2002, the applicant's husband became a naturalized United States citizen. On May 20, 2002, the applicant's husband filed another Form I-130 on behalf of the applicant. On the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 8, 2002, the applicant departed the United States, and returned on the same date. On December 2, 2002, the Acting District Director denied the applicant's Form I-485 because the applicant had abandoned her application by departing the United States. On June 24, 2003, the applicant's initial Form I-130 was approved. On August 22, 2003, the applicant filed another Form I-485. On October 24, 2005, the applicant filed a Form I-601. On November 9, 2005, the District Director denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from November 11, 1999, the date the applicant's authorization to remain in the United States expired, until May 20, 2002, the date the applicant filed her Form I-485. The applicant is attempting to seek admission into the United States within 10 years of her November 8, 2002 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's spouse would face extreme hardship if the applicant's waiver is denied. *Form I-290B, supra*. Counsel states the applicant's spouse could obtain "'gainful' employment in Mexico," but "'comparable' employment [in Mexico] is nonexistent." *Counsel's Brief*, filed January 5, 2006. Counsel states "the proper analysis should be whether [the applicant's] spouse would be able to find employment in Mexico that is comparable to his employment in the United States and allows him to support a family of four." *Id.* [redacted] states the applicant's husband pays child support for another child he has with another woman; however, there was no documentation submitted establishing that the applicant's husband pays any child support. *See Psychological Evaluation by [redacted]*, page 8, dated October 6, 2005. The AAO notes that the applicant's husband is an experienced tile installer and there has been no documentation submitted that the applicant's husband could not find comparable employment in Mexico. Further, counsel cited no caselaw that would establish that comparable employment must be found. Counsel has not established that the applicant could not support his family through gainful employment in Mexico. Additionally, the AAO notes that before the applicant came to the United States, she worked as a machine operator, and she has failed to establish that she could not obtain employment in Mexico, that could help support the family. Counsel states the District Director "abused [his] discretion in disregarding the psychological report." *Counsel's Brief, supra*. Counsel contends that the psychological report should not be disregarded "because the psychological evaluator 'is not a licensed physician.'" *Id.* [redacted], a psychotherapist, states the applicant's husband is "stressed, worried and anxious." *Psychological Evaluation by [redacted]*, page 2, *supra*. [redacted] states the applicant's husband "meets the criteria...for...Acute Stress Disorder [and] Dysthmic Disorder." *Id.* at 4. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant's husband and the psychotherapist. There was no evidence submitted establishing an ongoing relationship between the psychotherapist and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychotherapist, thereby rendering the psychotherapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [redacted] notes that the applicant's husband is "under doctors' care." *Id.* at 3; *see also Counsel's Brief, supra* ([redacted] has seen a physician regarding his problems and the physician has prescribed medication to ease [redacted]'s anxiety."). However, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis, or what assistance is needed and/or given by the applicant. The AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in Mexico. Further, there is no indication that the applicant's husband has to remain in the United States to receive his medical treatments. The AAO notes that the applicant's husband is a native of Mexico, who speaks Spanish, and it has not been established that the applicant and her husband have no family in Mexico. The applicant has not demonstrated that her children could not join her in Mexico. It has not been established that the applicant's children, who are 6 and 8 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding

the extreme hardship he would suffer if the applicant were removed from the United States. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanied his wife to Mexico.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment, education opportunities for the children, and in close proximity to his family. As a United States 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. Further, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States 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 applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 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.