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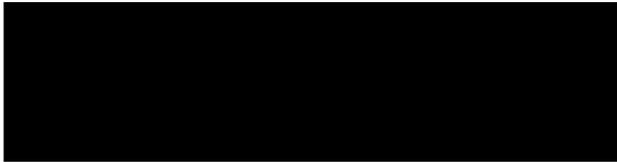
IN RE:



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:



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, Portland, Oregon. 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 U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated November 10, 2004.

On appeal, counsel asserts that the district director made factual errors when adjudicating the applicant's case and used the incorrect standard of "exceptional and extremely unusual" hardship when making a decision on the applicant's waiver application. Counsel also states that the district director did not meaningfully address the relevant hardship factors in his decision. *Counsel's Appeal Brief*, dated December 9, 2004.

In the present application, the record indicates that the applicant entered the United States with a visitor's visa on August 8, 2001 with an authorized stay until February 7, 2002. The applicant remained in the United States until July 2003. Therefore, the applicant accrued unlawful presence from when her authorized stay expired on February 7, 2002 until July 2003, when she departed the United States. In applying for an adjustment of status, the applicant is seeking admission within 10 years of her July 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 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 due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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 alien 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 to U.S. citizens or lawful permanent residents in the United States, family ties outside 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 BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in 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.

The AAO notes that there is an issue as to the applicant's ability to relocate to Australia. The AAO finds that the record lacks any evidence to suggest that relocation to Australia would be a possibility for the applicant at the present time and will not consider such a relocation in reviewing her application.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The applicant's spouse was born and raised in the United States. In his statement, the applicant's spouse states that he does not speak Spanish. The applicant's spouse states that he has two children in the United States from a former marriage. The applicant's spouse also states that he pays child support for these children. In addition, his former spouse submitted a letter stating that she is concerned that if he relocates to Mexico he will not be able to see the children on birthdays and holidays and he will not be able to meet his child support obligations. The applicant also stated in his statement, dated August 2, 2004 that he traveled to Mexico for a period of seven months to look for employment and housing, but feels that living is expensive and employment would be hard to find. The AAO notes that no documentation was submitted to support these statements regarding his seven-month trip to Mexico. No documentation showing that the applicant's spouse was in Mexico was submitted nor was any country condition information regarding employment in Mexico submitted. Furthermore, the applicant's spouse submitted no documentation regarding the child support he pays for his children or that he will not be able to visit his children on occasion after relocating to Mexico. The applicant's spouse must submit documentation to support his statements. Due to the lack of supporting documentation, the AAO finds that the current record does not reflect that the applicant's spouse will suffer extreme hardship upon relocation to Mexico.

Furthermore, the applicant has not established that her spouse would suffer extreme hardship by remaining in the United States and being separated from the applicant. The AAO notes that the applicant is not permanently inadmissible to the United States and in 10 years from her last departure she will no longer be inadmissible to the United States. Therefore, any separation would be temporary. The applicant's spouse states that he would suffer emotionally from being separated from the applicant. He states that he fears for the safety of the applicant and her children because they were previously assaulted on more than one occasion while living in Mexico. The AAO notes that no documentation was submitted to support these statements. In addition, no documentation was submitted to show that the applicant and her children would be unable to move to a safer area of Mexico. In support of assertions regarding his emotional suffering the applicant's spouse submitted a statement from [REDACTED], of Life Works of Central Oregon. In Ms. [REDACTED] letter, she states that she saw the applicant's spouse on June 15, 2004 to discuss his marriage and his children. Ms. [REDACTED] concludes that to break the family unit up could cause devastating effects for all involved. The AAO notes that the submitted letter is based on a single meeting between the applicant's spouse and the family counselor. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a counselor, thereby rendering Ms. [REDACTED]'s findings speculative and diminishing the report's value in determining extreme hardship. The AAO recognizes that the applicant's spouse will suffer hardship as a result of being separated from the applicant, but the current record does not establish that he would suffer extreme hardship, above and beyond what would normally be expected upon removal of a family member. Therefore, a thorough review of the entire record does not reflect that separation will result in extreme hardship to 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.

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 an 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.