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U.S. Citizenship
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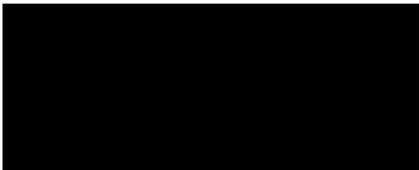
JAN 31 2007

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:



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 applicant submitted a waiver application which the District Director, Chicago, Illinois, denied. 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 § 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 ten years of her last departure from the United States. The applicant is married to a lawful permanent resident (LPR) of the United States and is the beneficiary of an approved petition for alien relative. She filed a form I-485 application to adjust status on April 9, 2003, and she currently seeks a waiver of inadmissibility in order to adjust her status to that of LPR and remain in the United States with her husband and family.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her LPR spouse. The application was denied accordingly. On appeal, counsel asserts that the applicant's spouse will experience emotional, financial, and health difficulties should he return to Mexico to accompany the applicant. Counsel submits medical documentation establishing that the applicant's husband suffers from diabetes and hypertension. Counsel maintains that the applicant's husband would not remain in the United States in the applicant's absence, because they have been married for several decades and cannot live apart. 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.

The record reflects that the applicant entered the United States in 1994 without inspection, and she remained in this country without any lawful status until her departure in December 1998. The applicant returned to the United States in July 1999 using a valid Border Crossing Card. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her December 1998 departure, a period of over one year. In applying to adjust her status to that of LPR, the applicant is seeking admission within ten years of her December 1998 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

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. In the instant case, the applicant's only qualifying relative is her LPR husband. Hardship the alien herself experiences upon deportation is irrelevant to § 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 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 he relocated to Mexico in order to remain with the applicant. Counsel points out that the applicant's husband maintains close ties with his three U.S. citizen children and four grandchildren, and he states that severing these ties will be devastating to the applicant's husband. The record does not establish, however, that the separation from his U.S. family members would cause the applicant's husband to suffer greater psychological hardship than others in his situation. The record also does not establish that the applicant's husband would be unable to find suitable employment in Mexico, or that he would experience extreme hardship on account of Mexican human rights practices, as counsel suggests.

Counsel also contends that the applicant's husband would be unable to obtain proper medical care in Mexico. The record contains a note from Dr. [REDACTED], dated May 4, 2005. Dr. [REDACTED] wrote that the applicant's husband suffers from diabetes mellitus and hypertension. Dr. [REDACTED] also wrote that the applicant's husband must follow a strict diet, which the applicant must prepare for him in order to control his health conditions. Prescriptions for the applicant's husband's medications are attached to the doctor's note. The record this shows that the applicant's husband has chronic diseases for which he takes medication; however, nothing in the record establishes that the applicant's husband would be unable to obtain the necessary care and medications in Mexico.

Counsel states that the applicant's spouse would experience financial hardship if he remains in the United States on his own subsequent to the applicant's removal, because he is only able to work at two jobs due to the applicant's household support. The record, however, does not establish that the applicant's husband is unable to perform household tasks or that he has no alternative assistance (such as his children) available. In addition, there is no evidence on the record that the applicant's husband's emotional suffering due to the applicant's absence would exceed that which typically affects the spouses of removed individuals.

U.S. court decisions have repeatedly held that the common results of removal 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), defined extreme hardship as hardship that exceeds 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. It is also noted that 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 husband will endure hardship as a result of separation from the applicant. However, his situation is not extraordinary and does not rise to the level of extreme hardship. 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 § 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.