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

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FILE: [REDACTED] OFFICE: LOS ANGELES, CA Date: NOV 29 2007

IN RE: Applicant: [REDACTED]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and 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, pursuant to the record, entered the United States without inspection in February 1986 and remained until January 2003, when she voluntarily departed the United States. Approximately 15 days later, the applicant re-entered the United States without inspection. The applicant thus accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in January 2003. She 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 be able to remain in the United States with her lawful permanent resident mother.

Section 212(a)(9)(B)(i)(II) 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 district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 18, 2004.

In support of the appeal, the following documents were provided: a brief from the applicant, dated January 15, 2005; a letter and translation from the applicant's father's physician, outlining his medical conditions; a declaration from the applicant's mother, a lawful permanent resident, dated January 15, 2005; evidence regarding the applicant's mother's significant other's medical conditions; and documentation regarding the applicant's employment. The entire record was reviewed and considered in rendering this decision.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 and/or her U.S. citizen children experience upon removal is not relevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's mother, a lawful permanent resident. 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 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. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

To begin, the applicant's mother, a lawful permanent resident, states that she will suffer emotional and psychological hardship were the applicant removed from the United States. As stated by [REDACTED] the applicant's mother, "...since her arrival to the United States, [REDACTED] [the applicant] and I have never been separated. I have contact with her every day. I see her everyday. I talk to her about her day and she asks about mine. We are very close. My daughter is a single mother. She has two children...Her children live with me at my residence as well...my relationship with my daughter, [REDACTED], is special. She has always been

there for me...She has comforted me in my times of need and suffering. It is very difficult for me when my significant other suffered his first heart attack. I have lived with him for 24 years. Although we are not married, I view him as my husband. [REDACTED] was there with me. She helped me to take care of him. She consoled me when I felt weak. She is my pillar of strength...I would hate to see [REDACTED] be removed from the United States because it would be devastating to me emotionally...In addition, I would worry for her because she has not lived in Mexico since she was 12 years old..." Declaration from [REDACTED] dated January 15, 2005.

In addition, the applicant's mother states that she will suffer financial hardship were the applicant removed from the United States. As [REDACTED] "...I am an elderly person. I have not worked since July 3, 2002. Because of my age, it is difficult for me to find a job. I have not (sic) source of income... [REDACTED] applicant] helps me financially with the household expenses. She is a hardworking person and a good provider for her family. She is the only person that helps me. If she would be removed...I would lose the financial assistance that she provides for me. I have two other children, [REDACTED] [REDACTED] lives in the United States but she is married and has a family of her own. She does not provide me with support and she cannot provide me with the help and care that [REDACTED] provides me. My other daughter, [REDACTED] lives in Mexico...the money she earns she uses to support her family..."*Id.* at 2.

Based on the above documentation, it has been established that the applicant's mother would lose the emotional, physical and financial support that the applicant has been providing to her for over 20 years were the applicant removed from the United States. This loss would lead to extreme hardship for the applicant's mother, a lawful permanent resident.

The AAO notes, however, that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad in the event the applicant's waiver of inadmissibility request is denied. In this case, the applicant has not asserted any reasons why the applicant's mother, born in Mexico, is unable to relocate to Mexico to reside with the applicant. As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship if she were not permitted to return to the United States for ten years, and moreover, the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship were she to relocate to Mexico to accompany the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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