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FILE: [REDACTED] Office: CHICAGO, ILLINOIS Date: DEC 05 2008

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:
[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway
for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Chicago, Illinois, 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 El Salvador 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 United States citizen husband, two United States citizen children, and one lawful permanent resident child.

The Acting 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. *Acting District Director's Decision*, dated March 23, 2006.

On appeal, the applicant, through counsel, contends that "the written notice of denial mischaracterizes the evidence submitted in support of [the applicant's] waiver and misapplies the legal standard she is required to meet in order to be granted the waiver she seeks." *Form I-290B*, filed April 25, 2006.

The record includes, but is not limited to, counsel's brief, and affidavits from the applicant and her husband. 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 is available 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, section 212(a)(9)(B)(v) 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 without inspection on April 16, 1999. On April 30, 2001, the applicant's husband filed a Form I-130 on behalf of the applicant. On July 26, 2001, the applicant filed an Application for Temporary Protected Status (Form I-821). On October 27, 2001, the applicant's Form I-821 was approved. On an unknown date, the applicant departed the United States. On May 2, 2002, the applicant reentered the United States on advance parole. On September 11, 2002 and August 11, 2003, the applicant filed additional Forms I-821. On December 21, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 7, 2005, the applicant filed a Form I-601. On March 23, 2006, the Acting District Director denied the Form I-485 and 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. On September 19, 2006 and September 13, 2007, the applicant filed additional Forms I-821.

The applicant accrued unlawful presence from April 16, 1999, the date the applicant entered the United States without inspection, until October 27, 2001, the date the applicant's Form I-821 was granted. The applicant is attempting to seek admission into the United States within 10 years of her 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.

The applicant claims that the Service gave her "a parole permission and explained that [she] could use this permission to leave the U.S. and return without any problems...Because [she] left the country with advance

permission to return and for an urgent family emergency, [she] thought that [she] would not have a problem later.” *Affidavit from the applicant*, dated April 25, 2006. The AAO notes that on the second page of the Authorization for Parole of an Alien into the United States (Form I-512), it clearly states:

If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the proceedings of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

The applicant was put on notice that if she departed the United States after 180 days of unlawful presence in the United States, she could be found inadmissible. The record establishes that the applicant’s Form I-821 was not approved until October 27, 2001; therefore, she knew she was not legally present in the United States until her Form I-821 was approved. Additionally, it is the applicant’s responsibility to ensure she understood the consequences of her application. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act because she was unlawfully present in the United States for one year or more, and is seeking admission within 10 years of her 2002 departure.

The applicant, through counsel, claims that the applicant’s husband would face extreme hardship if the applicant were removed to El Salvador. *See Appeal Brief*, page 4, dated April 24, 2006. The applicant’s husband states that he “will suffer unbearable and irreparable hardships if [the applicant] is unable to adjust her status and remain in the U.S. with [him] and with [their] three children.” *Affidavit from [REDACTED]* dated April 25, 2006. The applicant states her husband “will suffer all of the economic, emotional and psychological trauma of [their] separation, and [she] know[s] he will suffer even more as a result of watching [their] children suffer devastating hardships.” *Affidavit from the applicant, supra*. The applicant’s husband states “[i]t would be impossible for [their] children to stay in the U.S. without [the applicant] because [they] need both of [their] incomes to meet [their] financial obligations.” *Affidavit from [REDACTED] supra*. The AAO notes that it has not been established that the applicant’s husband has no transferable skills that would aid him in obtaining a job in El Salvador. Additionally, the AAO notes that the applicant’s husband is a native of El Salvador, who spent his formative years in El Salvador, he speaks Spanish, and his mother and siblings resident in El Salvador. *See id.; see also affidavit from the applicant, supra*. The applicant’s husband states that when his stepdaughter resided in El Salvador, “she lived a lonely, poor, and insecure life.” *Id.* Additionally, the applicant’s husband claims that it would be “impossible for [his children] to all go to El Salvador with [the applicant]...[The applicant] and children would be subjected to terrible conditions.” *Id.* As noted above, hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Additionally, it has not been established that the applicant’s children, who are 4, 8, and 11 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of El Salvador. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in El Salvador.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, maintaining his employment and in close proximity to his family. As a United States citizen, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant states “[t]here is no one who could help [her] husband care for [their] children if [she]

return[s] to El Salvador for ten years.” *Affidavit from the applicant, supra*. The applicant’s husband claims that his “family could not help out either financially or with caring for [his] children.” *Affidavit from [REDACTED] supra*. The AAO notes that even assuming the applicant’s spouse’s family cannot help care for his children, it has not been established that he will be unable to provide or obtain adequate care for his children in the applicant’s absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. The applicant’s husband states he “cannot meet [his] family’s basic family obligations with [his] income alone.” *Id.* Counsel states “[i]t would be financially impossible for [the applicant’s husband] to pay for child care for three children, continue payments on the family home, and also send money to [the applicant] in El Salvador for her support.” *Appeal Brief, supra* at 6-7. The AAO notes that it has not been established that the applicant would be unable to contribute to her family’s financial wellbeing from a location outside of the United States. The applicant’s husband states that “[b]oth of [their] families in El Salvador only survive with the help of the money [they] send to them every month.” *Id.* The AAO notes that 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 spouse faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case presents, 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.