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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: PHOENIX, ARIZONA

Date: **JAN 30 2008**

IN RE:

Applicant:



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, 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 United States citizen. 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 spouse and daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 14, 2006.

On appeal, the applicant asserts that her husband will suffer extreme hardship if she is removed to Mexico. *Statement attached to Form I-290B*, filed March 14, 2006.

The record includes, but is not limited to, statements from the applicant and her husband, a letter from the applicant's mother-in-law, marriage certificates for the applicant's first and second marriage, a divorce certificate for the applicant's first marriage, and a letter from [REDACTED] regarding the applicant's husband's medical conditions. 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 daughter 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 daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on January 29, 1994, the applicant married [REDACTED], a United States citizen, in Mexico. On November 2, 1997, the applicant entered the United States with a Border Crossing card. On November 7, 1997, the applicant's husband, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-495). On June 7, 2001, the District Director denied the Form I-130 and Form I-485, finding the applicant abandoned the applications by failing to appear for an interview. On August 22, 2001, the applicant divorced [REDACTED]. On December 16, 2001, the applicant married [REDACTED], a United States citizen, in Arizona. On May 28, 2002, the applicant's daughter, [REDACTED], was born in Arizona. On July 31, 2003, the applicant's husband, [REDACTED], filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On January 12, 2004, the applicant filed an Application for Travel Document (Form I-131), which was approved on January 20, 2004. On May 1, 2004, the applicant departed the United States on her advance parole and reentered on May 8, 2004. On January 30, 2006, the applicant filed a Form I-601. On February 14, 2006, 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 husband.

The applicant accrued unlawful presence from June 7, 2001, the date the applicant's first Form I-485 was denied, until July 31, 2003, the date the applicant's second Form I-485 was filed. The applicant is attempting to seek admission into the United States within 10 years of her May 1, 2004 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 asserts that the Service erred in approving her Form I-131. *See Statement of the Applicant*, dated March 10, 2006. She claims that "someone did not check [her] records to see if [she] was actually eligible for advance parole." *Id.* However, 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." Clearly, the applicant was put on notice that if she departed the United States after 180 days of unlawful presence in the United States, she may be found inadmissible. The record establishes that the applicant's first Form I-485 was denied on June 7, 2001, and she received this decision on June 12, 2001, as demonstrated by the applicant's signature on the Domestic Return Receipt. Therefore, the applicant knew she was not legally present in the United States until her second Form I-485 was filed. 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 May 1, 2004, departure.

The applicant's claims her husband would suffer extreme hardship if she were removed to Mexico. The applicant states her "husband is a US citizen who has never been to Mexico, and speaks no Spanish...[Her] husband could not understand even simple instructions required for a menial type job in Mexico." *Statement of the Applicant, supra.* The AAO notes that the applicant has not established that her husband could not learn the Spanish language, or that he has no transferable skills that would aid him in obtaining a job in Mexico. The applicant states that if she is removed from the United States, she and her daughter would suffer extreme hardship because her "family would be separated, one of [them] would raise [their] daughter, and the other would be alone." *Id.* However, as noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. Additionally, the AAO notes that the hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Furthermore, the applicant has not demonstrated that her daughter, who is 5 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The applicant states her husband is suffering from "this stress and the thought of losing his family." *Id.* [REDACTED] states the applicant's husband "is under extreme stress...In the last year his blood pressure has been elevating." *Letter from [REDACTED]*, dated March 8, 2006. The AAO notes that [REDACTED] has "not treated [the high blood pressure] with medication at this time," and he is "very close to putting [the applicant's husband] on anti-depressant

medications.” *Id.* The AAO notes that there was no documentation submitted establishing what assistance is needed and/or given by the applicant. Additionally, there was no documentation submitted establishing that the applicant’s husband could not receive treatment for his medical conditions in Mexico, or that the applicant’s husband has to remain in the United States to receive his medical treatments. Furthermore, the AAO notes that there are no professional psychological evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant’s husband mentally, emotionally, and/or psychologically. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to her spouse if he remains in the United States, maintaining his employment. The applicant’s husband states he has “no desire to go [to Mexico].” *Affidavit of [REDACTED]* dated January 28, 2006. 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’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). The applicant states that “[i]t is clear, however that [her] husband would not accompany [her] to Mexico...He would still be obligated to support his family, and this is something that he can only do if he remained in the United States and kept his current job.” *Statement of the Applicant, supra*. The AAO notes that the applicant’s husband is employed as a tool grinder and makes over \$40,000 a year, which could clearly help support the applicant in Mexico. Additionally, the applicant has not established that she 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).

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 husband 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.