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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date:

**JAN 31 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (I-601 Application) was denied accordingly.<sup>1</sup>

On appeal the applicant indicates, through counsel, that her husband is disabled, and that the evidence establishes her husband will suffer extreme physical, emotional and financial hardship if the applicant's I-601 application is denied.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny 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.

The record reflects that the applicant married her husband in Mexico on August 15, 1997. She was admitted into the United States as a B2 nonimmigrant visitor on September 13, 1997, with an authorized period of admission valid through March 12, 1998. The applicant did not depart the United States upon the expiration of her authorized period of admission, and she remained unlawfully in the United States until January 2000, at which time she voluntarily departed the U.S. in order to travel to Mexico. The applicant reentered the United States without admission or parole in April 2000. She remained unlawfully in the United States until November 4, 2005, when her husband filed a Form I-485, Application to Register Permanent Residence or Adjust Status (I-485 application) on her behalf.

The Board of Immigration Appeals (Board) clarified in its decision, *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006), that a:

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) only if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at

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<sup>1</sup> It is noted that the district director erroneously cited section 212(h) of the Act, 8 U.S.C. § 1182(h) language in her decision. The AAO finds the error to be harmless, as the district director nevertheless correctly analyzed extreme hardship factors relating to the applicant's qualifying relative.

the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years.

Because the applicant was unlawfully present in the United States for more than one year between March 1998 and her departure in January 2000, and because the applicant is, via her I-485 application, seeking admission less than ten years after her January 2000 departure from the United States, the applicant is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.<sup>2</sup>

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 applicant is married to a naturalized U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act, extreme hardship waiver purposes. It is noted that U.S. citizen and lawful permanent resident children are not qualifying relatives for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The hardship claims made with regard to the applicant's U.S. citizen son, born November 7, 1998, may therefore only be considered to the extent that they relate directly to extreme hardship suffered by the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991.)

The record contains the following evidence relating to the applicant's husband's [REDACTED] extreme hardship claim:

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<sup>2</sup> "[T]he term, "admission" generally refers to adjustment of status from within the United States, as well as lawful entry at the border." *In re Rodarte-Roman, supra* at 908.

A declaration signed by [REDACTED] on March 23, 2006, stating in pertinent part that: he is a naturalized U.S. citizen, and has lived in the United States for over twenty years; he and his wife have been married for nine years and have a U.S. citizen child together; he and his son would miss the applicant's emotional and maternal support if she had to leave the United States, and his son would lose educational opportunities and would have problems with the Spanish language if he moved to Mexico; his wife is the primary caretaker for his son, and she would be unable to work and care for their child in Mexico; he is a self-employed landscape contractor who works 60 hours a week, Monday through Saturday, and he is the sole provider for his family; he would be unable to find work in Mexico, and he would be unable to support households in both the U.S. and in Mexico; he suffers from medical ailments and pain in his back, legs and hips, and must go for physical therapy two times a week.

A June 20, 2006, Initial Orthopedic Treating Physician's Evaluation, by [REDACTED] The evaluation states in pertinent part that in his youth, the applicant's husband underwent hip replacement surgery in Mexico after falling off a horse and suffering from Leg Perthe's disease. The evaluation indicates that [REDACTED] experiences pain and medical ailments in his neck, head and back, as well as in his hips, knees and legs, and that his condition sometimes renders him incapacitated for days. The evaluation indicates that [REDACTED] received unspecified treatment in 1996 and in 1998, and the evaluation states that further studies are needed.

Federal tax returns reflecting that [REDACTED] is a self-employed landscape gardener, and that his gross earnings are approximately \$27,000 a year.

Copies of the applicant's apartment rental receipts reflecting that he and his family have lived in the same apartment since 1998, and that [REDACTED] pays \$565 a month in rent.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish her husband would suffer extreme hardship if he remains in the U.S. without the applicant. The evidence in the record fails to demonstrate that the applicant would be unable to work in Mexico, or that [REDACTED] relies on the applicant financially. Furthermore, the AAO notes the U.S. Supreme Court holding in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." The applicant also failed to present evidence establishing that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. Moreover, the medical evaluation evidence contained in the record fails to state or establish that [REDACTED] is disabled, as indicated by counsel on appeal. The medical evaluation evidence additionally fails to establish that the applicant's presence in the United States would lead to an improvement in [REDACTED]'s present medical condition, and the evidence fails to establish that [REDACTED] would suffer additional medical hardship if the applicant's Form I-601 application were denied. Further, there is no evidence that [REDACTED] would be unable to arrange for alternate childcare if his son were to remain in the United States with him.

The applicant also failed to establish that her husband would suffer extreme hardship if the applicant were denied admission into the United States and [REDACTED] returned with his family to Mexico. As noted above,

the medical and overall evidence contained in the record fails to corroborate counsel's claim that [REDACTED] is disabled. The record also contains no evidence to corroborate [REDACTED] statement that he goes to physical therapy two times a week. Rather, the evidence in the record reflects that [REDACTED] is able to work as a landscaper/gardener up to 60 hours a week. Furthermore, the evidence indicates that [REDACTED] obtained hip surgery in Mexico, and the record contains no evidence to indicate or establish that [REDACTED] would be unable to obtain other medical treatment in Mexico. The evidence in the record also fails to establish that [REDACTED] or the applicant would be unable to find employment in Mexico. The record indicates further that [REDACTED] was born and raised in Mexico, and that he met and married the applicant in Mexico, and the AAO notes that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has not been found to rise to the level of extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986.)

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

**ORDER:** The appeal is dismissed. The application is denied.