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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

FILE [Redacted]

Office: PHOENIX, AZ

Date:

JAN 05 2004

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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. 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 is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (WAC-92-271-52332). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. See *District Director Decision, Attachment I-292*, dated February 26, 2003.

On appeal, counsel requests an additional 10 days in which to submit a brief to the AAO. It has been eight months since the appeal was filed and the AAO has received no further documentation. A decision will therefore be made based on the current record.

The record contains a report from Addiction Services, PC, dated March 10, 2003; a statement from the applicant, dated August 2, 2002; copies of the naturalization certificate, Arizona Driver's License, and Social Security Card for the applicant's spouse; copies of the U.S. birth certificates for the applicant's children; a translation of the Mexican birth certificate of the applicant; verification of employment for the applicant's spouse and copies of financial and income tax return documents for the couple. The entire record was reviewed and considered in rendering a decision.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure

or removal, . . . is inadmissible.

- (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.

In the present application, the record indicates that the applicant entered the United States without inspection in 1988. On May 7, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). In April 1999, the applicant obtained advance parole authorization and departed and re-entered the country.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until May 7, 1998, the date of her proper filing of the Form I-485. 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. It is further noted that Congress specifically did

not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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 Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) 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 offers the report compiled by Addiction Services, PC as evidence of extreme hardship. The report indicates that if the applicant departs the United States, her husband might have to leave his job and may be unable to meet the emotional and financial needs of his family. The report further states that as a result, the applicant's husband may plunge into depression and possible substance abuse. The report extrapolates further predicting potential drug and alcohol abuse by the applicant's children if they begin to feel anger and resentment towards the United States as a result of their mother's removal. See *Elvia Berumen Report* at 2. The AAO finds these assertions to be speculative and unsubstantiated by facts in the record. Extreme hardship is not based on an applicant's theories of possible consequences of her inadmissibility, but rather can only be found in factual documentation of actual hardship. The record does not establish that the applicant's spouse and/or children have a history of drug and/or alcohol abuse. The record does not establish that the applicant's spouse has a history of depression or that he is currently receiving any form of treatment for depression. The record does not demonstrate that the applicant's children are at risk of dropping out of school or that they harbor any feelings of resentment toward the United States.

The record compiled by Addiction Services, PC, also makes assertions regarding the hardship posed to the Berumen family by the possibility of living in Mexico. The record does not conclusively establish that the applicant's husband would be unable to obtain employment in Mexico. Further, the AAO notes that the applicant's husband, as a U.S. citizen, is not required to depart from the United States as a result of a denial of the applicant's waiver.

U.S. 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, *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), 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. *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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse owing to 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.