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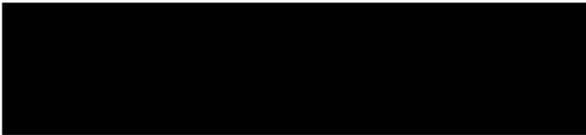


FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: JUL 21 2006

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



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. 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 who is married to a lawful permanent resident (LPR) of the United States, and she has applied to adjust status to that of LPR based on the approved petition for alien relative filed by her husband. The applicant was found to be inadmissible to the United States pursuant to § 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 ten years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The district director found that the applicant had failed to establish extreme hardship to her LPR spouse. The application was denied accordingly. On appeal, counsel asserts that the evidence of record is sufficient to establish that the applicant's spouse would suffer extreme hardship in the event of the applicant's removal. Counsel submits a brief on appeal, but no additional evidence. The AAO has reviewed counsel's brief as well as the entire record in rendering this decision, and it is determined that the district director did not err in her decision to deny the waiver.

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 record reflects that the applicant entered the United States without inspection in 1993. She was outside the United States from April 25 to June 2, 2002, returning to this country pursuant to an advance parole. The

proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under § 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 July 28, 1999, the date she filed her Form I-485, a period of more than one year. In applying to adjust her status to that of LPR, the applicant is seeking admission within ten years of her April 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the U.S. citizen or LPR spouse or parent of the applicant. Hardship the alien herself or her children experience upon her removal is irrelevant to § 212(a)(9)(B)(v) waiver proceedings. 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) 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 asserts that Citizenship and Immigration Services (CIS) should not have issued the advance parole document to the applicant, given that she had been unlawfully present in the United States. It is pointed out that advance parole may be granted to a number of different classes of aliens applying for admission to the United States, specifically those aliens who have pending applications for adjustment of status, such as the applicant; it is not solely for the benefit of permanent or conditional residents, as counsel claims. *Brief in Support of Appeal* at 3. The applicant was, therefore, eligible to apply for advance parole and the director was not precluded from granting the parole. Moreover, on August 11, 2001, prior to departing the United States, the applicant received a letter from the district director informing her that her application for adjustment of status was denied.¹ The August 11, 2001 letter explained to the applicant that beginning on that date, she began to accrue unlawful presence, and if she remained in the United States for over 180 days, she would be barred from returning to the United States for three years. Hence, the applicant was informed of the risk posed by her subsequent departure.

Counsel points out that the applicant and her husband have been married for almost 40 years, that they have five children living in the United States, and that they have deep connections to this country. Counsel asserts

¹ The AAO notes that the application for adjustment of status was subsequently reopened pursuant to a Service Motion on December 21, 2001.

that the applicant's husband's life will be traumatically disrupted by her removal whether he returns to Mexico to accompany the applicant or remains in the United States without her. In his declaration dated September 7, 2004 the applicant's husband wrote that he would be unable to find a stable job with a fair wage in Mexico, and he would not be able to afford to visit the applicant if he remained in the United States. The applicant's husband stressed that he could not imagine living without the applicant after so many years together. He also stated that he was accustomed to life in the United States; thus, it would be difficult to adjust to Mexico again.

The evidence on the record does not establish that the applicant's husband would be unable to obtain employment in Mexico, or that he would experience extreme hardship in adjusting to life in that country. Also, there is no documentation establishing that the applicant's husband would suffer greater than usual emotional distress if the applicant were removed. The AAO does not disregard or take lightly the applicant's husband's concerns regarding the choices and changes he may face due to the applicant's inadmissibility; however, his experience is not demonstrably more negative than that of other spouses separated as a result of removal.

U.S. court decisions have repeatedly held that the common results of removal 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), defined extreme hardship as hardship that exceeds 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. It is also noted that the U.S. 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).

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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See § 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.