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U.S. Citizenship
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APR 11 2007

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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO
(CDJ 1998 816 445 RELATES)

Date:

IN RE: [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 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 Officer in Charge, Ciudad Juarez, Mexico. 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 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 applicant is married to a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and United States citizen child.

The Officer-in-Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated September 26, 2005.

On appeal, counsel asserts that the applicant has demonstrated that her spouse would suffer extreme hardship if the applicant's waiver request were denied. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, letters from the applicant; letters from the applicant's children; medical letters and records for the applicant; tax statements for the applicant and her spouse; numerous special education evaluations and reports for the applicant's son; and a copy of the monthly mortgage payment for the family's Texas home. The entire record was reviewed and considered in rendering 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.

In the present application, the record indicates that the applicant entered the United States without inspection in 1998 and remained in the United States until her departure in March 2005. *Form I-601*. The applicant accrued unlawful presence from 1998 until March 2005, when she departed the United States. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her March 2005 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 violation of 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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship that would be suffered by the applicant's spouse if the applicant's waiver request were denied. Hardship to the applicant or her children will be considered only to the extent that it affects the applicant's spouse. If 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 section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form I-130, Petition for Alien Relative*. Apart from the applicant and their children who remain in Mexico (*See attorney's brief*), the record does not indicate what additional family members, if any, the applicant's spouse may have in Mexico. Counsel asserts that the applicant's spouse has to work multiple jobs and long hours to provide support for his family outside the United States. *Attorney's brief*. While the AAO acknowledges counsel's assertions, it does not find that the record documents that the applicant or her spouse would be unable to sustain themselves and contribute to their family's financial well-being in Mexico. The AAO observes that one of the applicant's non-U.S. citizen children has a learning disability and was receiving special education services through the school system in the United States. *See numerous evaluations and reports, Garland Independent School District, Special Education Department, Garland, Texas*. The AAO notes that there is nothing in the record to address the effect, financial or otherwise, that this child's learning disability has upon the applicant's spouse. Furthermore, although counsel places emphasis on the hardship also suffered by the applicant's U.S. citizen child (*See attorney's brief*), the AAO notes

that the U.S. citizen child is not a qualifying relative in this particular case. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The record does not indicate what family members, if any, the applicant's spouse has in the United States. The AAO observes that the applicant's spouse submitted a several-page declaration in Spanish, but the record fails to include a certified translation of this document. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document in a foreign language that is submitted to Citizenship and Immigration Services must be accompanied by a full English-language translation that has been certified as complete and accurate by the translator who has also certified that he or she is competent to translate from the foreign language into English. The applicant suffers from some hearing loss in her right ear and has been advised to wear a hearing aid. *Letter from [REDACTED] University la Salle U.N.A.M.*, dated January 20, 2006. While the AAO acknowledges this condition, the record does not address how the applicant's health condition affects her spouse, since hardship to the applicant herself is not directly relevant to this proceeding. The applicant states that she does not have a life without her spouse and her children being together. *Statement from the applicant*, dated April 21, 2005. While the AAO acknowledges this emotional difficulty, it again notes that the record does not indicate how the applicant's distress affects her spouse, the qualifying relative.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not indicate that his situation, if he remains in the United States, is different from that of other individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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)(i)(II) 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.