



U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, AZ

Date: FEB 22 2007

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 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 United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

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 spouse. The application was denied accordingly. *Decision of the District Director*, dated July 14, 2005.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) has not conclusively established that the applicant is inadmissible under section 212(a)(9)(B). Counsel also states that the applicant has demonstrated that her spouse would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from counsel, dated March 30, 2005; an employment letter for the applicant's spouse; tax statements for the applicant and her spouse; and an employment letter for the applicant. 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.

The record indicates that the applicant entered the United States in 1994 with a border crossing card. *Form G-325A for the applicant*. She remained in the United States until July 2000, when she departed to Mexico. *Id.* The applicant re-entered the United States at the end of July 2000 using her border crossing card. *Id.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 2000, the date 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 July 2000 departure from the United States. Based on the record, the AAO concludes that the applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 children or that the applicant herself would experience upon removal 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 suffered by the applicant's spouse if the applicant is removed. 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 spouse 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 the adjudication of this case.

If the applicant's spouse travels with her to Mexico, the applicant needs to establish that her spouse would suffer extreme hardship. The applicant's spouse was born in the United States in El Paso, Texas. *See birth certificate*. Both of his parents reside in Mexico. *Form G-325A for the applicant's spouse*. Counsel asserts that it is well-documented that Mexico's economy does not have sufficient employment and even if the applicant's spouse were able to find a job in Mexico, he would not have sufficient income to live above the poverty level. *Attorney's brief*. The AAO acknowledges the assertions made by counsel, however,

it notes that the record fails to include the documentary evidence referred to by counsel to support such assertions. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without supporting documentary evidence, the assertions of counsel will not meet the petitioner's burden of proof of this proceeding. The assertions of counsel do not constitute evidence. *Id.* Additionally, the AAO does not find that the record demonstrates that the applicant would be unable to sustain herself and contribute to her family's financial well-being in Mexico. Counsel asserts that the applicant's U.S. citizen children would suffer if they resided in Mexico, as they have not had any formal academic education in Mexico and would have a difficult time adjusting to Mexican life. *Attorney's brief.* The AAO notes that the applicant's U.S. citizen children are not qualifying relatives in this particular case, and the difficulties that they might encounter in adjusting to a different country have not been demonstrated as affecting the applicant's spouse to the extent that he would suffer an extreme hardship if he resided in Mexico. The AAO observes that apart from counsel's assertions, the record fails to include any statements made by the applicant or her spouse regarding the hardship the applicant's spouse may encounter if he were to reside in Mexico. 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 applicant's spouse works all day to provide the financial support for their family, while the applicant stays at home to care for their children. *Attorney's brief.* Counsel asserts that the applicant's spouse would suffer if he remained in the United States while the applicant resided in Mexico, as he would be separated from the applicant and he would not be able to care for their children alone. *Id.* The record fails to address if there are any other family members who could assist in taking care of the children, and whether the family could hire someone to assist in these responsibilities. Additionally, there is nothing in the record to demonstrate that the applicant would be unable to contribute to her family's financial responsibilities from a location outside of the United States. Counsel asserts that the applicant's spouse will suffer from anxiety, depression and stress if the applicant were removed from the United States. *Attorney's brief.* The AAO notes that the record fails to include any supporting documentation from a licensed health professional to support these assertions. 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, his situation, if he remains in the United States, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 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.