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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CIUDAD JUAREZ, MX

Date: **AUG 20 2008**

(Related: CDJ 2004 645 263)

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:

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) 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, and the Form I-601 will be denied.

The record reflects that 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 under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that evidence in the record establishes the applicant's husband will suffer extreme emotional and financial hardship if the applicant's Form I-601 is denied.

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

[A]ny alien . . . 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.

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

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . 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 the end of a qualifying period of unlawful presence. . . .

The record reflects that the applicant entered the United States unlawfully in July 2000. The applicant remained unlawfully in the United States until April 2005, when she voluntarily departed the U.S. and went to Mexico. Because the applicant was unlawfully present in the United States for more than one year between July 2000 and April 2005, she is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

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.

In the present matter, the applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility 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, waiver of inadmissibility purposes. Hardship claims made with regard to the applicant's U.S. citizen children may therefore only be considered to the extent that they relate directly to extreme hardship suffered by the applicant's husband [REDACTED]

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the 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 (9th 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 (9th Cir. 1991.)

The applicant asserts, through counsel, that the denial of her Form I-601 application will cause extreme emotional and financial hardship to her husband.

The record contains the following evidence relating to the applicant's extreme hardship claim:

An affidavit written by [REDACTED] stating that he came to the United States in 1979, and that he became a U.S. citizen in September 1995. Mr. [REDACTED] states that he and the applicant married in 2001, and that they have two U.S. citizen children together, born July 4, 2001 and February 14, 2003. Mr. [REDACTED] states that he lives with his family in Texas. He states that his U.S. lawful permanent resident mother and sister and his U.S. citizen brother live in San Antonio, Texas. Mr. [REDACTED] states that he has four other U.S. citizen children from a former marriage. These children are all in their twenties, and work and live in California. Mr. [REDACTED] states that he is

self-employed as a tortilla distributor for Mission Foods, and that he has worked hard over the years to build a reputation and to become successful. He states that it would be difficult to find similar work in Mexico, and that he would be unable to distribute tortillas in Mexico because people make their own, or buy tortillas from local stores. Mr. [REDACTED] states that he would have to sell his distributor business as well as the home he owns in Texas if he moved with the applicant to Mexico. He states that his wife would probably remain Chilpancingo, Guerrero and he indicates that the distance between that city and Texas is large. Mr. [REDACTED] states that if he did not move to Mexico, it would be very expensive and time-consuming to travel between Texas and Chilpancingo. Mr. [REDACTED] indicates further that he wants his young children to obtain an education in the United States so that they may succeed in life.

U.S. birth certificates for the applicant's two youngest children.

Evidence of three of [REDACTED]'s elder children's U.S. citizenship.

Evidence of [REDACTED]'s sister and mother's U.S. lawful permanent resident status, and his brother's U.S. citizenship status.

Evidence that [REDACTED] owns a house in Texas.

A copy of [REDACTED]'s 2001, distributorship contract with Mission Foods.

A map of Mexico.

A copy of the 2004 U.S. Department of State Country Report on Mexico.

The AAO finds, upon review of the evidence, that the applicant has failed to establish that her husband would suffer financial or emotional hardship beyond that normally experienced upon removal of a family member if the applicant is denied admission into the United States and [REDACTED] either remains in the U.S., or moves with the applicant to Mexico.

The Ninth Circuit Court of Appeals held in *Shoostary v. INS*, 39 F.3d 1049, 1051, (9th Cir. 1994.) that the, "extreme hardship requirement . . . was not enacted to insure that the family members of excludable [or removable] aliens fulfill their dreams or continue in the lives which they currently enjoy." The Board held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship.

The present record contains no evidence to demonstrate [REDACTED]'s income or the success of his Mission Foods distributorship. The distributorship contract reflects further that Mission Foods will pay [REDACTED] if he decides to sell his distributorship. In addition, the AAO notes that the country condition evidence provided by the applicant is general and fails to demonstrate that [REDACTED] would be unable to do similar work in [REDACTED]

[REDACTED]
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Mexico, or that he would be unable to find other work in Mexico. The applicant therefore failed to establish that her husband would suffer extreme financial hardship if the applicant's Form I-601 were denied.

The applicant also failed to establish that her husband would suffer extreme emotional hardship if the applicant were denied admission into the United States. The country conditions evidence contained in the record fails to demonstrate that the applicant's two young children would be unable to obtain a good education in Mexico. The AAO notes further that [REDACTED]'s older children and grandchildren live in a different state, and are thus already not living close to him. Mr. [REDACTED] mother, sister and brother also live in a different city in Texas, and the AAO notes that emotional hardship caused by severing family and community ties has been found to be a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.)

A 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. The applicant failed to establish that her husband would suffer extreme hardship in Mexico or in the United States if the applicant were denied admission into the United States. The AAO therefore finds it 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 Form I-601 application will be denied.

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