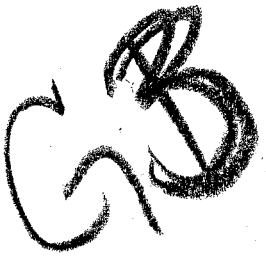
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Ave., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 3 0 2004

IN RE: Obligor: [redacted]
Bonded Alie

IMMIGRATION BOND: Bond Conditioned for Voluntary Departure under § 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c

ON BEHALF OF OBLIGOR: Self-represented

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The voluntary departure bond in this matter was declared breached by the Field Office Director, Detention and Removal, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on January 25, 1999, the obligor posted a $500.00 bond conditioned for her voluntary departure. An order of the immigration judge (IJ) dated January 21, 1999, was issued granting the alien voluntary departure in lieu of removal on or before March 20, 1999. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On April 19, 2002, the BIA dismissed the appeal and granted the alien voluntary departure within 30 days from the date of the order. On April 28, 2004, the field office director concluded the bond had been breached.

On appeal, the obligor asserts that she has a pending motion to reopen before the BIA and a petition for review before the Ninth Circuit Court of Appeals.

The regulation at 8 C.F.R. § 1003.2(f) provide in part that filing a motion to reopen shall not stay the execution of any decision made in the case. An appeal to the federal court of appeals does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1252(b)(3)(B). There is no evidence of record to indicate that either the BIA or the Ninth Circuit Court of Appeals has stayed the bonded alien's removal

The regulation at 8 C.F.R. § 1240.26(c)(3) provides that in order for the voluntary departure bond to be cancelled, the alien must provide proof of departure to the field office director.

No satisfactory evidence has been introduced into the record to establish the alien made a timely departure. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

Voluntary departure bonds are exacted to ensure that aliens will depart when required in lieu of removal. Such bonds are necessary in order for Immigration and Customs Enforcement (ICE) to function in an orderly manner. After a careful review of the record, it is concluded that the alien failed to depart by the stipulated time, the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: AUG 3 1 2004

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, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the Interim 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The interim 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 Interim District Director,* dated July 2, 2003.

On appeal, counsel asserts that the denial of the waiver application is an abuse of discretion. Counsel further contends that evidence of extreme hardship will be provided in a brief to be filed at a later date. *Form I-290B*, dated July 31, 2003. The AAO notes that approximately one year has elapsed since the filing of the appeal and no additional documentation has been received into the record. A decision, therefore, will be rendered based on the record as it currently stands.

The record contains copies of the United States birth certificates of the applicant's spouse and two of her children; a notarized letter from the applicant's spouse; a notarized statement from the applicant, dated June 9, 2003; a letter from a physician, dated May 29, 2003; copies of medical records for the applicant's son; letters of support and verification of the employment of the applicant's spouse. 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 with a border crossing card in October 1998. On June 16, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On or about August 13, 2001, the applicant used Authorization for Parole of an Alien into the United States (Form I-512) to depart and reenter the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [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 October 1998, after expiration of her three days of authorized stay under her border crossing card, until June 16, 2000, 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 herself experiences upon deportation is irrelevant to section 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 Bureau 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 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 record fails to establish hardship to the applicant's spouse imposed as a result of relocation. The record reflects that the spouse of the applicant is a United States citizen and that their children attend school in the United States. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The record, however, does not establish that the applicant's spouse is unable to relocate in order to remain with the applicant.

Further, the record does not establish extreme hardship to the applicant's spouse if he remains in the United States in the absence of the applicant. The applicant's spouse asserts that the applicant stays at home to care for the children, particularly their son who suffers from asthma. *Letter from Andres Martinez,* undated. The record fails to establish that the applicant is the only person able to provide care for her children while the

applicant's spouse works. Further, the record does not demonstrate that the medical condition of the applicant's son requires care beyond occasional physician and hospital visits and administration of medicine. *Medical Report signed by Daniel E. Tinlin, MD*, dated June 30, 2001 ("This is a well-appearing child who is in no acute distress.") The applicant's spouse states that he "would suffer extreme hardship financially, and mentally, emotionally [sic]." *Letter from Andres Martinez.* The record fails to provide documentation to support these generalized 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. Moreover, 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). The AAO recognizes that the applicant's husband would endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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.