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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: APR 19 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

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 naturalized citizen of the United States and seeks a waiver of inadmissibility in order to remain in the United States with her husband and U.S. citizen 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 husband. The application was denied accordingly. *See* Decision of the Interim District Director, dated May 2, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] did not properly consider the evidence presented. Counsel contends that the applicant's husband has established extreme hardship, but needs to secure evidence to support the claim. *See* Form I-290B, dated May 21, 2003. Counsel subsequently and timely submitted a brief with supporting documentation. *See* Opening Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability, dated June 16, 2003.

The record contains a copy of the naturalization certificate of the applicant's spouse; copies of the U.S. birth certificates of the applicant's children; a letter from priests at the Catholic church of which the applicant is a member; a declaration of the applicant's spouse, dated November 13, 2001; a declaration of the applicant, dated November 12, 2001; a letter from a licensed psychologist, dated May 24, 2003; copies of documents evidencing the scholastic achievement of the applicant's children; a letter verifying the employment of the applicant's spouse; copies of documents evidencing the medical insurance of the applicant's family; letters of support and a copy of a prescription issued to the applicant. The entire record was reviewed and considered in rendering a decision.

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-
> >
> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . 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 visitor visa in March 1994. The applicant overstayed her period of authorized presence in the United States and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on September 28, 1998. 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.* Subsequently, the applicant obtained advance parole authorization and departed and re-entered the country. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until September 28, 1998, the date of her proper filing of the Form I-485, and triggered unlawful presence provisions by departing the country. 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; the only relevant hardship in the application is that which is proven to be imposed on the applicant's husband. 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.

Counsel asserts that the applicant's husband would face extreme hardship if he relocated to Mexico in order to remain with the applicant. Counsel points to economic and social conditions in Mexico stating that the applicant's husband would be unable to find comparable employment in his native country and the couple's children would be subject to uncertain educational standards. *See* Opening Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability at 3, 12-13. Counsel contends that the applicant's husband has established himself in his community and has worked hard as a drywall repairer to

earn sufficient income and obtain medical insurance for his family. *Id.* at 3-4. *See also* Letter from Margaret Moran, dated May 21, 2003.

Counsel further states, "Without [the spouse of the applicant's] services, Arizona [sic] economy will suffer." *Id.* at 3. The AAO notes that this last assertion of counsel is unpersuasive, as the record does not establish that the absence of the applicant's spouse in the drywall industry would impose any ramifications on Arizona's economy. Certainly, such an extraordinary claim requires more evidence than simply the praise of the colleagues and employers of the applicant's spouse. *See* Letter from Bill Losacco, Superintendent, Sun Lakes Construction, dated May 15, 2003.

While counsel establishes hardship to the applicant's spouse if he were to relocate to Mexico to remain with the applicant, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States in order to maintain his employment and medical insurance benefits and continue uninterrupted the American schooling of his sons. The AAO notes that, as a naturalized 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. Counsel states that the applicant's husband will be subjected to financial hardship as a result of maintaining two households if he is separated from the applicant. *See* Opening Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability at 4. The record, however, does not demonstrate that the applicant's wife cannot support herself financially while residing outside of the country. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that counsel has also submitted a letter from a certified school psychologist attesting to the academic achievement of the applicant's son. *See* Letter from Elsa H. Holtzman, Ph.D., dated May 24, 2003. While counsel contends that the letter supports the proposition that "the family will suffer greatly should Mrs. Romero be denied the waiver and sent back without her family or with her family," the AAO finds that the letter merely indicates that "it was observed that Mrs. Romero is a mother who has high expectations for her son's achievements and this can play a role in the results of the testing..." *See* Opening Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability at 3 and Letter from Elsa H. Holtzman, Ph.D. at 2. In fact, the school psychologist's letter amounts to nothing more than an overview of the applicant's life advocating that she be allowed to remain in the United States; the letter does not support a finding of extreme hardship suffered by the applicant's husband.

Counsel also submits a copy of a prescription for medication issued to the applicant stating that it constitutes "evidence of her treatment for [psychological problems]." *See* Opening Brief in Support of Appeal of Order Denying Application for Waiver of Grounds of Excludability at 5. The AAO finds counsel's assertion that the applicant is suffering from psychological problems unpersuasive in the absence of evidence beyond a copy of a prescription. The record does not contain any evidence of an ongoing relationship between the applicant and a mental health professional. Further, the AAO reiterates that hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

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 husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

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.