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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: AUG 09 2004

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:

[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 District Director, Phoenix, Arizona and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. He 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 a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his naturalized U.S. citizen spouse. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States and reside with his U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated April 15, 2003.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .
>
> (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 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 without inspection in July or August 1992. The applicant admitted that he departed the United States on July 5, 1998. It was this departure that triggered his unlawful presence. On April 4, 1999, the applicant was admitted to the United States as a non-immigrant visitor for pleasure for a period of six months expiring on October 3, 1999. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on May 5, 1999, based on an approved Petition for Alien Resident. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 7, 1998 the date he departed the United States. 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.

The record further reflects that Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant on July 24, 1999, and on November 15, 2000. The applicant used these documents to depart from and reenter the United States on four different occasions. These departures did not result in unlawful presence since the issuance of the Forms I-512 and the applicant's trips were after he had filed an Application to Register Permanent Residence or to Adjust Status (Form I-485).

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (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.*

As stated above, section 212(a)(9)(B)(v) of the Act provides that a 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 on a qualifying family member, U.S. citizen or lawfully resident spouse or parent.

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or Lawful Permanent Resident (LPR) parents. [1]

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) 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.

On appeal, counsel submits a brief and a psychological evaluation on behalf of the applicant's spouse (Ms. [redacted] In her brief counsel states tha[redacted]as a right to be married with the person of her choice and the right to live with her husband in the United States. In addition counsel states that the applicant has no immigration history other than traveling with an advance parole and should not be inadmissible because he departed the United States with CIS permission. The record of proceedings reflects that the applicant entered without inspection in 1992 and remained in the United States for a long period of time without authorization. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act not because he used the advance parole documents to travel outside the United States but because he accumulated unlawful presence from April 1, 1997, until July 7, 1998 the date he departed the United States.

A mental health evaluation conducted by a psychotherapist was submitted which states that [redacted] suffers from anxiety and depression that followed a miscarriage. The report was based on one interview with the [redacted] family, was conducted while [redacted] was approximately eight month pregnant and discusses general hardship that would be imposed o[redacted] if the applicant was to leave the country. The report does not establish that [redacted] condition is caused by the fact that the applicant may be unable to remain in the United States. The evaluation concluded tha[redacted] may suffer from Postpartum

[1] On appeal counsel mentions that the applicant's parents are LPR's but there is no discussion of hardship they would suffer if the applicant is not permitted to remain in the United States.

Depression and her symptoms of depression and anxiety may increase leading to Major Depression and Anxiety Disorder. The evaluation is not persuasive since it is based on hypothetical conclusions. There is no independent corroboration to show th medical condition will be jeopardized if she decides to relocate to Mexico with the applicant. In addition the record contains no evidence to indicate that adequate health maintenance and follow-up care and medication are unavailable in Mexico.

Counsel further states that does not want to relocate to Mexico due the economic conditions in Mexico, that she would be unable to find employment and is worried that the applicant would be robbed or kidnapped because he is from the United States. Furthermore counsel states that if the applicant were removed from the United States would be required to care for and support her children and would be unable to afford day care due to her limited financial resources. Although counsel states that Ms. Alcantar is presently unemployed, the record reflects that she was previously employed and no reason was given why she would not be able to find employment and provide for herself and her children.

There are no laws that require to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). 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). *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 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse or LPR parents would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.