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U.S. Citizenship and Immigration Services

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[redacted]

MAY 01 2007

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. 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 the daughter of lawful permanent resident (LPR) parents and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that a review of all the documentation in the record indicates that the applicant failed to establish that the applicant's parents would suffer hardship beyond the normal economic and social disruptions associated with the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated July 20, 2004.

On appeal, counsel states that the Department of Homeland Security erred in finding that the applicant's removal would not result in extreme hardship to the applicant's parents. *Form I-290B*, dated August 19, 2004.

The AAO notes that counsel indicated on the Form I-290B, Notice of Appeal, that he would be sending a brief and/or evidence to the AAO within 30 days. On March 1, 2007, the AAO sent a facsimile to counsel requesting the additional documentation. As of this date, no documentation has been submitted. Therefore, the current record is complete.

The record indicates that the applicant entered the United States, without inspection on or about August 7, 1989 at the age of six. The applicant filed her adjustment application (Form I-485) on April 4, 2003. The applicant then applied for advance parole on September 15, 2003. The applicant departed the United States on or about October 2, 2003 and then re-entered with her parole document on October 30, 2003. 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 of more than one year, from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 4, 2003, the date of her proper filing of the Form I-485. In applying for adjustment of status, the applicant is seeking admission within 10 years of her October 2, 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act.

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.

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 and/or parent of the applicant. Hardship the alien herself experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The AAO notes that extreme hardship to the applicant's parents must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are 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 adjudication of this case.

Evidence of extreme hardship includes a statement from the applicant's mother, [redacted], who states that she brought the applicant to the United States when she was six years old. *Mother's Statement*, dated June 22, 2004. The applicant's mother asserts that she has no family in Mexico. She also states that she is a diabetic, has high blood pressure, high cholesterol and severe back pain. [redacted]'s statement indicates that the applicant's father left their family many years ago and that the absence of a father figure has affected her oldest son. She states that this son, who lives with her, is addicted to drugs and is not allowed to see his wife and children. [redacted] explains that the only family member allowed to see her grandchildren is the applicant and that the applicant's removal would cut off her ties to her grandchildren. Although [redacted] reports that her younger son also lives with her, she states that he is soon to leave home and start his own life. She contends that if the applicant is removed, her youngest son would not be in a position to help her financially or to take her to the doctor. [redacted] states that she depends on the applicant financially, as well as for transportation and translation services in connection with her medical care.

[redacted] asserts that her health would prevent her from relocating to Mexico with the applicant. She contends that her health will worsen in the future and that, in Mexico, she would be unable to receive adequate medical care.

In support of [redacted]'s statement, the record offers a letter from [redacted], M.D., F.A.C.C., Pacific Cardiology Associates in Fremont, California. [redacted] states that [redacted] is under his care for the diagnoses of rhabdomyolysis, diabetes, hypertension and chronic back pain and that her symptoms range from moderate to severe and can be crippling at times. He confirms that her condition makes it impossible for her to drive an automobile to and from her medical appointments and that she is most often driven by the applicant. [redacted] also reports that the applicant must frequently translate medical instructions for her mother and that she is generally involved with all aspects of her mother's care and treatment. Were [redacted] to lose the applicant's support, [redacted] states, it could aggravate her condition and make it more difficult for her to obtain medical treatment. *Letter from* [redacted] *M.D., F.A.C.C.*, undated.

The applicant has also submitted informational materials on rhabdomyolysis and an unsigned March 12, 2003 notice of settlement indicating that a suit brought by [redacted] against a medical clinic for professional negligence in prescribing medications alleged to have resulted in [redacted] rhabdomyolysis has been settled.

As noted above, the first part of a hardship analysis requires the applicant to establish that her mother would suffer extreme hardship if she relocates to Mexico. While the AAO notes the conditions from which [redacted] suffers and her statement that her health would not allow her to move to Mexico, it finds the record to offer no documentary evidence to support her claim that she would be unable to receive adequate medical care in Mexico, now or in the future. Going on record without supporting documentation will not meet the burden of

proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not established that relocating to Mexico would constitute an extreme hardship for her mother.

The second part of the analysis requires the applicant to prove that [redacted] would suffer extreme hardship if she remains in the United States without the applicant. The AAO acknowledges [redacted]s medical conditions and the assistance that the applicant provides her mother in this regard. Nevertheless, it does not find the record to establish that the applicant's removal would result in extreme hardship for [redacted] if she continued to live in the United States. [redacted] statement indicates that the applicant's two adult siblings live with her. Although she contends that her oldest son is a victim of substance abuse, has been charged with several felonies and is financially dependent on her, the record offers no proof of his inability to assist his mother in the applicant's absence, either financially or in obtaining medical care. Neither does the record establish that [redacted] younger son, described by his mother as "very self-centered" and about to leave home to begin his own life, would be unable to offer her financial support or perform the same services as the applicant in relation to her medical care. Moreover, the record offers no evidence, beyond [redacted] statements, that she is financially dependent on the applicant, the extent of her financial dependence or that the applicant would be unable to provide her with the same level of assistance from a location outside the United States. *Id.*

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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.