



U.S. Citizenship
and Immigration
Services

#2

[Redacted]

DEC 09 2009

FILE:

[Redacted]

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, 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 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 record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130) and Petition for Alien Fiancé(e) (Form I-129F). The applicant 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 reside in the United States with her United States citizen husband, daughter, and stepson.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 28, 2007.

On appeal, the applicant, through counsel, contends that the District Director "erred in denying applicant's waiver", "erred in finding that applicant's qualifying relative (spouse) would not suffer extreme", and "erred in finding that the favorable factors do not outweigh the unfavorable factors." *Form I-290B*, filed July 31, 2007.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant and her husband, letters of recommendations, and a psychological evaluation on the applicant's husband. The entire record was reviewed and considered in arriving at 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 [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.

The AAO notes that the record contains several references to the hardship that the applicant's daughter and stepson would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter and stepson will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that the applicant initially entered the United States in November 1982 without inspection. On June 28, 1989, an Order to Show Cause (OSC) was issued against the applicant. On December 4, 1989, the applicant filed an Application for Suspension of Deportation (Form I-256A). On January 9, 1990, an immigration judge ordered the applicant deported from the United States. On January 12, 1990, the applicant filed a motion to reopen the immigration judge's decision. On January 23, 1990, an immigration judge granted the applicant's motion to reopen. On August 10, 1990, an immigration judge denied the applicant's Form I-256A and granted the applicant voluntary departure to depart the United States by January 15, 1991. On August 23, 1990, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On June 25, 1992, the applicant's father filed a Form I-130 on behalf of the applicant. On September 21, 1992, the applicant's Form I-130 was approved. On February 24, 1993, the Board affirmed the immigration judge's decision and ordered the applicant to voluntarily depart the United States within 30 days of the order. On July 22, 1993, a Warrant of Deportation (Form I-205) was issued. On July 1, 2002, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 23, 2005, the applicant's husband filed a Form I-129F on behalf of the applicant. On August 5, 2005, the applicant's **Form I-130 was approved. On September 19, 2005, the applicant's Form I-129F was approved.** In February 2006, the applicant departed the United States. On February 15, 2006, the applicant filed a Form I-601. On June 28, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until July 1, 2002, the date the applicant filed her Form I-485. The applicant is attempting to seek admission into the United States within 10 years of her February 2006 departure from the United States. 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 citizen or lawfully

resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 states the applicant's husband's "mental health has suffered a great impact from the separation from [the applicant] and children." *Appeal Brief*, page 6, filed July 31, 2007. In an affidavit dated July 19, 2007, the applicant's husband states he "suffer[s] tremendously being apart and separated from [the applicant] and [his] child." In a psychological evaluation dated July 14, 2007, [REDACTED] states the applicant's husband is "desperate and depressed." The AAO notes that although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on one interview between the applicant's husband and a social worker. There was no evidence submitted establishing an ongoing professional relationship between the social worker and the applicant's husband. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the assessment's value to a determination of extreme hardship.

Counsel states if the applicant's husband joins the applicant in Mexico, "he will suffer great financial impact. He will have to leave his permanent job...where he has worked since December 1, 2005.... [The applicant's husband] has always been the sole provider for the household." *Appeal Brief, supra* at 5. Counsel further states if the applicant is not allowed to return to the United States, her husband "will have to leave behind his steady job and home and move back to a country where he does not think he will be able to find employment after so many years in the United States." *Id.* at 6. The AAO notes that the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job in Mexico, or sufficiently detailed his attempts to find employment to demonstrate that it is unavailable. Additionally, the AAO notes that the applicant's husband is a native of Mexico who speaks Spanish, and he spent his formative years in Mexico. It has not been established that he has no family ties in Mexico.

Counsel states the applicant's daughter is residing with the applicant in Mexico, but "[t]he separation of the child from her father has caused the child great pain as it also did to her father.... [Additionally,] she is separated from her grandparents and aunts [and] [it] is also causing her tremendous pain." *Id.* at 5, 6. Counsel further states the applicant's husband's "children are United States citizens and he believes they can have a much better life here." *Id.* at 5. The AAO notes that the applicant's children may experience

some hardship in relocating to Mexico; however, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. Counsel states the applicant's husband's elderly mother "suffers from diabetes and dementia and has been rather dependent on [the applicant's husband] over the past several years. When [the applicant] was living in Houston, she provided care to her mother in law." *Id.* at 6. The AAO notes that there is no medical documentation in the record establishing that the applicant's mother-in-law is currently suffering from any medical conditions. However, if the applicant's mother-in-law is suffering from any medical conditions, the AAO notes that if she joined the applicant in Mexico, then the applicant could continue to provide care for her. Additionally, the AAO notes that the applicant's mother-in-law is a native of Mexico. Furthermore, the AAO notes that the applicant's mother-in-law is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his family. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant's husband depended on the applicant to help care for his mother and son but now he is alone caring for them. *See appeal brief, supra* at 6. The AAO notes that it has not been established that the applicant's spouse is unable to provide or obtain adequate care for his mother and son in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. The applicant's husband states he sends the applicant "money to support [their] family and keep a roof over their heads while they are in Mexico." The AAO notes that it has not been established that the applicant is unable to obtain employment in order to help support her family, or that she is unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States 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).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 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.