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U.S. Citizenship
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FILE:

[REDACTED]
CDJ 2004 822 743 (relates)

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:

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). 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 and daughter.

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 April 12, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he [S]ervice neglected to fully consider the legitimate, extreme hardship [applicant's] U.S. citizen spouse has suffered and continues to suffer." *Form I-290B*, filed March 12, 2007.

The record includes, but is not limited to, counsel's brief, statements from the applicant's husband, and a psychological evaluation review 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 references to the hardship that the applicant's daughter 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 will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States in May 2001 without inspection. In October 2003, the applicant departed the United States. On October 24, 2003, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On October 26, 2004, the applicant's Form I-130 was approved. On February 14, 2006, the applicant filed a Form I-601. On February 9, 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 May 2001, the date the applicant entered the United States without inspection, until October 2003, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her October 2003 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 of Immigration Appeals (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.

Counsel states the applicant's husband is suffering "extreme emotional and physical hardship." *Appeal Brief*, page 4, dated April 17, 2007. In a statement dated April 6, 2007, the applicant's husband states he has "many sleepless nights and depressing days. [His] doctor's have been unable to control [his] high cholesterol due to the agony of this separation." The AAO notes that other than the applicant's

husband's statement, there is no medical documentation in the record establishing that the applicant's husband is suffering from any medical conditions. Counsel further states the applicant's husband "suffers from depression and anxiety, which requires him to see a therapist and [he] is on medication." *Appeal Brief, supra* at 6. In an evaluation review dated February 26, 2007, [REDACTED] states the applicant's husband has developed "stress related health symptoms due to the five year family separation and is on medication." The AAO notes that other than the review from [REDACTED] which does not state that the applicant's husband is suffering from depression and anxiety, there are no professional psychological evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant's husband mentally, emotionally, and/or psychologically.

Counsel states the applicant's husband has no close family ties in Mexico and he has resided in the United States for many years. The AAO notes that even though the applicant's husband has resided in the United States for many years, he is a native of Mexico who speaks Spanish and he spent his formative years in Mexico. Additionally, other than counsel's statement, it has not been established that the applicant's husband has no family ties in Mexico. Counsel states the Service "fails to consider [the applicant's] close family ties in the United States, primarily her U.S. citizen spouse and daughter." *Appeal Brief, supra* at 3. The AAO notes that the applicant's ties to the United States are irrelevant in determining her eligibility for a waiver. Additionally, hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Counsel states the applicant's husband has a managerial position with Shell Oil and if he "is forced to return to Mexico he would not obtain the same kind of job...because of difficult economic conditions." *Id.* at 7. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico or that there are no employment opportunities for him there. 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. The applicant's husband states he "cannot move back to Mexico because [his] roots are now here in the United States." 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. The applicant's husband states he now supports two households which "has created [an] economical and emotional hardship in [his] life." The AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be 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.