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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2005 628 796 (relates)

Date: NOV 27 2009

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 wife 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 March 30, 2007.

On appeal, the applicant, through counsel, claims that the applicant "is eligible for the waiver of unlawful presence...because she is the spouse of a U.S. Citizen." *Form I-290B*, filed May 2, 2007.

The record includes, but is not limited to, counsel's appeal brief, letters from the applicant's husband and stepson, 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 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 stepson 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 on October 30, 2000 without inspection. On November 21, 2003, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On September 24, 2004, the applicant's Form I-130 was approved. On April 6, 2006, the applicant departed the United States. On April 17, 2000, the applicant filed a Form I-601. On March 30, 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 October 30, 2000, the date the applicant entered the United States without inspection, until April 6, 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her April 6, 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 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 and stepson "will suffer extreme hardship if [the applicant] is not granted this waiver." *Appeal Brief*, page 1, filed May 31, 2007. In an affidavit dated May 25, 2007, the applicant's husband states "[s]ince [the applicant] has been gone [their] family has been incomplete."

Counsel states the applicant's husband "is already suffering from extreme hardship because due to the emotional detriment of being separated from [the applicant]." *Appeal Brief, supra* at 3. In a psychological evaluation dated May 15, 2007, [REDACTED] diagnosed the applicant's husband with major depressive disorder. [REDACTED] states the applicant's husband states he has become "more withdrawn and isolated after [the applicant] was not allowed back into the country." The AAO notes that since the applicant's husband's depression is primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Mexico then the depression would presumably no longer be an issue. Counsel states the applicant's husband cannot "leave the U.S. to go to Mexico to be with [the applicant] because he cannot leave his son." *Appeal Brief, supra* at 3. Counsel further states that as a "teenager [the applicant's stepson] [is] still very much emotionally and financially dependent upon his father... [The applicant's husband] planned to help his son...financially to help him achieve his dream of a college education." *Id.* at 4. The AAO notes that the applicant's stepson is nineteen years old and he spent most of his formative years in Mexico. Additionally, it has not been established that he cannot attend college in Mexico. Furthermore, the AAO notes that the applicant's stepson may be experiencing some hardship in residing in Mexico; however, the applicant's stepson is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

Counsel states that the applicant's husband cannot relocate to Mexico because he cannot leave his real estate business. The applicant's husband states the applicant "planned to get her beautician's license and become a hair stylist." The AAO notes that it has not been established that the applicant cannot pursue her plans of becoming a hair stylist in Mexico. Additionally, hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Counsel further states the applicant's husband "is already suffering extreme hardship from having to bear the burden of financially supporting himself in the U.S. while at the same time supporting [the applicant] in Mexico." *Id.* at 4. The AAO notes that the applicant's husband is a business owner, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico or that there are no employment opportunities for him there. 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. Furthermore, it has not been established that he has no family ties in Mexico.

The AAO finds that counsel has demonstrated extreme hardship to the applicant's husband if he remains in the United States without the applicant; however, it has not been established that the applicant's husband would suffer extreme hardship if he joined the applicant in Mexico. The applicant's husband states he "need[s] [the applicant's] economic help to keep the household running." The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband'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). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he joins her in Mexico.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that

the applicant's husband has endured hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to join the applicant in Mexico.

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