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U.S. Citizenship
and Immigration
Services

H3

FILE: [REDACTED] Office: PHOENIX

Date: JUL 18 2005

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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 married to a citizen of the United States and seeks a waiver of inadmissibility (Form I-601) in order to reside in the United States with her family.¹

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated October 31, 2003.

On appeal, counsel asserts that the district director erred in denying the applicant's waiver request asserting that the evidence in the record had established extreme hardship to her spouse. *Form I-290B*, dated November 26, 2003. Counsel has not submitted a brief on appeal but contends that the evidence in the record supports a finding that the applicant is eligible for the waiver. In addition, counsel has submitted additional documents in support of the contention that the applicant's spouse will be unable to obtain suitable employment in Mexico. The entire record was reviewed and considered in rendering 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 Attorney General [Secretary] that the refusal of admission to such immigrant alien

¹ The record reflects that the applicant is also asserting hardship to her three U.S. citizen children. However, under the statute, hardship that the applicant or her children may face is not relevant to a determination of her eligibility for the waiver sought.

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant entered the United States at Nogales, Arizona, in August of 1997 on a multiple entry B-2 visitor's visa and was authorized to remain for a period of six months. The applicant remained beyond the period of authorized stay and departed the United States on an unspecified date in December 1999, subsequently reentering the United States on December 28, 1999, using the B-2 visitor's visa. The evidence reflects that the applicant had married her U.S. citizen spouse on October 8, 1997, in Arizona shortly after her initial entry into the United States. On May 12, 2000, the applicant's spouse filed a Petition for Alien Relative (Form I-130), on the applicant's behalf, and the applicant simultaneously filed an Application for Adjustment of Status (Form I-485). The I-130 Petition was approved by CIS on July 17, 2003. Subsequent to the submission of the application and petition, the applicant departed the United States on an unspecified date in August 2000, pursuant to a grant of advance parole, returning to the United States on October 30, 2000.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized 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 from February 1998, the date of the expiration of her valid visa, until her departure from the United States in December 1999, a period of greater than one year. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her December 1999 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).*

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

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Mexico in order to remain with the applicant. The extreme hardship the applicant's spouse would allegedly suffer would result

from a variety of factors. These factors, as set forth in the various affidavits and documentary submissions, fall into three general categories: 1) the financial hardship that would befall the spouse due to his inability to find suitable employment in Mexico; 2) the emotional hardship the spouse would suffer due to the separation from his close family ties in the United States, including his parents and numerous siblings, if he were to accompany his wife to Mexico; and 3) the hardship to the break-up of his immediate family, including his separation from his wife and children and the concern over the limited educational and other opportunities for his children in Mexico, should he elect to remain in the United States. The following is a more detailed discussion of each of those factors.

First, a significant portion of the evidence submitted addresses the issue of the U.S. citizen spouse's inability to find suitable employment in Mexico. The applicant's spouse has submitted an affidavit in which he states that he would be unable to provide financially for his family because he would not find work in Mexico. See *Affidavit of* [REDACTED] dated May 11, 2003. The affidavit further states that conditions are very difficult in Mexico and asserts that his family would be homeless in Mexico and would be forced to live in the streets because neither he nor his wife have family that could financially support them there. He further states that he is purchasing a home for his family in the United States. *Id.* In addition to the spouse's affidavit, the evidence supporting the financial hardship consists of a joint sworn statement submitted by the spouse's parents and sworn statements from two of his sisters and a brother. See *Affidavit of* [REDACTED] undated; *Statements of* [REDACTED] dated May 12, 2003; *Statement* [REDACTED] dated May 11, 2003. All of the statements assert that the applicant's family will experience emotional and economic hardship if the applicant is not permitted to remain in the United States. Some of the statements assert that the applicant's children do not speak Spanish and would suffer due to their separation from their family, friends, education and activities in the United States. The applicant's parents assert that the family would have to begin to build their life from scratch in Mexico, and would give up the security they have in the United States such as health insurance, their home, stable jobs and their family support system. See *Affidavit of* [REDACTED] undated.

In addition to the affidavits from the applicant's family members, the record also contains the Department of State's Country Report on Mexico for 2001, and a document entitled *Documentation of Hardships of Deportation to Mexico on U.S. Citizens of School Age* issued by three individuals from the Phoenix area in 2002. In addition, the record also contains additional documents submitted with the appeal to support the contention as to the financial hardship. Those documents are three letters written in Spanish and accompanied by translations; issued by three individuals from Mexico between the 21st and 24th of November 2003. The individuals who submitted the letters identify themselves as general managers of businesses in Mexico. Each of the letters is offered in support of the claim that the applicant's spouse would be unable to obtain employment in Mexico. The letters assert that the applicant's spouse would be unable to work as a refrigeration engineer in Mexico due to various factors, including the differing nature of the refrigeration work in Mexico as opposed to the United States, the spouse's lack of employment authorization, and his inability to speak the language. See *Letters Dated November 21 and 24, 2003 Accompanying the Form I-290B*.

The district director found that evidence failed to establish that the applicant would suffer extreme hardship. With respect to the economic hardship, the district director found that the applicant had failed to submit any evidence to support the claim that he would be unable to obtain employment in Mexico. As to the remaining

claims of hardship, the district director found that nothing in the evidence indicated that it was necessary for the applicant's spouse to remain in the United States or that the spouse had any health related conditions that would require him to remain here. The district director additionally found that the remaining hardships claimed, i.e., a reduced standard of living, reduced educational opportunities for the children, and the loss of family and friends were the type of normal hardships experienced by individuals who must relocate from one country to another and did not rise to level of extreme hardship. The district director additionally noted that there was no requirement that the applicant's spouse accompany her to Mexico. The AAO does not find any error in the district director's decision but will address the evidence in greater detail, including the additional evidence submitted by the applicant's counsel on appeal.

The AAO is not persuaded by the claim of extreme economic hardship to the applicant's spouse. First, the AAO notes that the precise nature of the applicant's employment is not altogether clear from the record. It appears that as of November 5, 2002, when he submitted an affidavit of support on behalf of the applicant, he was employed as a "full-time instructor with United Technical Institute, Inc., although the nature of the type of training was unspecified. It also appears from a letter submitted by the applicant's spouse in support of her application for employment authorization that in June of 2002, he held an Arizona Contractor's license and was the President of Arizona Custom Refrigeration, Inc. Thus, it appears that he has extensive experience and training in the refrigeration industry including operating his own company, and most recently working as a technical instructor. The affidavits and letters submitted on the issue of economic hardship are offered to demonstrate the difficulty the applicant's spouse would allegedly have in obtaining employment in Mexico. However, the AAO does not find the evidence submitted on appeal to be persuasive. It is noteworthy that no explanation is given regarding the circumstances under which the letters were issued, nor has the correspondence that triggered the letters been offered. The lack of detail and supporting facts in the letters, and their lack of corroboration leads the AAO to find them conclusory in nature and to give them little weight.

The offered letters state that the spouse lacks the requisite technical skills, due to the difference in the refrigeration systems in the two countries. However, the letters do not address whether, and how, the spouse could acquire those skills through additional training or apprentice work. It would stand to reason that the spouse's extensive experience in the field in the United States would serve him well in acquiring the necessary additional skills to obtain similar employment in Mexico. On the issue of the applicant's language skills, the only evidence submitted are the cursory statements contained in the Mexican letters. However, no similar statement appears in the affidavits of the applicant's spouse or his family members. Furthermore, such an assertion is contradicted by other information in the record. Specifically, the applicant's spouse's birth certificate reflects that he was born in Omaha, Nebraska, in 1962, and that his parents, [REDACTED] and [REDACTED] were both born in Mexico. The joint affidavit submitted by the spouse's parents was actually written by one of their daughters, [REDACTED] who attached a certification of translation stating that she had written and translated the statement for her parents. These facts suggest that the spouse's parents' primary language is Spanish. It would not be unreasonable to assume that the applicant has Spanish language skills acquired from his parents that have enabled him to communicate with them throughout his life. Therefore, the information from the record, taken together, tends to contradict the information in the Mexican letters suggesting that the applicant lacks necessary language skills. Finally, the statement in the letters that the spouse lacks permission to work may be true, yet there is no indication from anything in the record that

the spouse, as an individual married to the citizen of Mexico, would be unable obtain authorization to work in Mexico.

The AAO turns next to the second and third claims of hardship. Those claims center on the emotional hardship to the applicant that would result from either accompanying his wife to Mexico, or alternatively, from remaining in the United States. The hardship claimed centers on the severing of family ties and the difficulties that would result from family separation and from the added stress of not having the assistance of family members.

It appears clear from the affidavits in the record that the spouse has a close relationship with his parents and siblings and that the family is close, both in terms of proximity and the support they offer each other. He would understandably experience emotional hardship due to a separation from his parents and extended family. However, there is insufficient evidence to demonstrate that the hardship could be characterized as extreme, as opposed to the normal hardship that would result from such a separation. Furthermore, the spouse's hardship on account of the separation from his parents is something within his control as there is nothing in the law that compels him to leave the United States to accompany his wife to Mexico. Similarly, the affidavit evidence offered indicates that he would suffer emotional hardship if he were to remain in the United States due to the absence of his wife and children whom he states would accompany his wife to Mexico. See *Affidavit of* [REDACTED] dated May 11, 2003. While the AAO recognizes that the spouse will understandably experience emotional hardship and concern for his family, there is nothing to indicate that his emotional difficulties would be beyond what would be expected in situations involving family members. In terms of his concern for their well-being, it is noted that the applicant's spouse has a good paying job and would presumably continue to provide for his family in Mexico. The AAO further notes that the applicant's children, as U.S. citizens, are like the applicant free to remain in the United States. While the hardship to the children themselves is not a relevant consideration under the law, to the extent that their presence in Mexico causes the applicant hardship that hardship can be reduced by having them remain with him in the United States.² The AAO notes that spouse's extensive family ties in the United States which, according to the family's own statements, reflect a close and supportive family, lead the AAO to believe that the applicant has family support available to him to assist with the children.³ Finally, the AAO notes that any hardship that the applicant may suffer, in addition to failing to satisfy the requirement of extreme hardship, is also not indefinite in nature. The applicant is subject to a ten-year bar from the United States. Much of that time has already elapsed, and while several years still remain, she will again be eligible to seek admission to the United States.

² The AAO observe that evidence in the record suggests that the couple's oldest child may have lived for a period of time in Mexico with her mother, thus contradicting the claim of a total lack of familiarity by the children with Mexico and the Spanish language. The record reflects that the daughter, now a naturalized citizen, was born in Mexico on December 16, 1993, in Sinaloa, Mexico. The applicant did not enter the United States until 1997; thus, it appears likely that the applicant's daughter resided with her in Mexico until at least that time. In fact, the daughter may have resided even longer in Mexico as the couple's tax records submitted by the applicant do not reflect the daughter as a dependent until the 2001 tax year, the same year the letter from the school indicates that she registered for school. See *Forms 1040 for Tax Years 1999-2001*. See also *Letter from Desert Garden School*, dated May 12, 2003. Furthermore, those same tax records reflect a Social Security number for the daughter that is later in sequence than those issued for her much younger siblings, suggesting that she did not have a U.S. Social Security number until she was first declared a dependent on the 2001 tax return.

³ The AAO notes that that the applicant has been employed in the United States. Given the young age of the applicant's younger children, it is likely that they were cared for in a traditional child-care setting, or by family members. Therefore, while the applicant's spouse would undoubtedly have additional child rearing responsibilities should he remain in the United States with his children, it appears that he has resources available to him to assist him in fulfilling those duties.

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. Moreover, the U.S. 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 recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.