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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



H3

FILE:



Office: PHOENIX, AZ

Date: MAY 24 2005

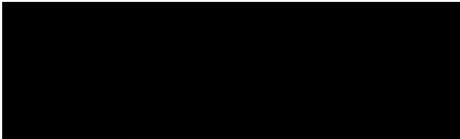
IN RE:



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:



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.

*for*   
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 determined 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. The applicant is married to a lawful permanent resident of the United States and 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 spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 12, 2003.

On appeal, counsel states that Citizenship and Immigration Services erred in denying the application because the applicant's husband would suffer extreme and unusual hardship if the applicant were removed from the United States. *Form I-290B*, dated November 25, 2003.

In support of this assertion, counsel submits a brief, dated December 10, 2003; a copy of the permanent resident card issued to the applicant's spouse; a copy of the couple's marriage certificate; copies of the immigration documents of the applicant's children; a copy of the United States birth certificate of the applicant's child; letters of support; a letter verifying the employment of the applicant's spouse; a letter from a physician establishing that the applicant's child suffers from asthma and copies of tax and financial documents for the applicant and her spouse. The entire record was reviewed and considered in rendering a decision.

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.

In the present application, the record indicates that the applicant entered the United States during July 1990 without inspection. On April 22, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States on March 25, 2001.

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 from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 22, 1999, the date of her proper filing of the second Form I-485 application. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

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 herself 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 contends that the applicant's spouse would suffer hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel states that the applicant's spouse has resided in the United States for 17 years and does not have any ties to Mexico. *Appeal*, dated December 10, 2003. Counsel indicates that if the applicant's spouse relocated to Mexico he would not earn enough money to provide for his family due to economic and political conditions in the applicant's home country. *Id.* at 3. Counsel reports that the applicant's children have to remain in the United States in order to receive lawful permanent resident status in

this country. *Id.* at 4. The AAO notes that waiver proceedings under section 212(a)(9)(B)(v) of the Act consider extreme hardship imposed on the U.S. citizen or lawfully resident spouse or parent of the applicant; the statute does not provide for consideration of hardship to the children of the applicant. Hardship imposed on the applicant's children is considered only insofar as it has an impact on the hardship suffered by the applicant's spouse.

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States in order to maintain lucrative employment, obtain lawful permanent residence for his children, maintain access to adequate health care for his child and continue residence in his adopted country. Counsel contends that the applicant's spouse would suffer financial hardship as a result of separation from the applicant as he would need to provide care for his children. *Id.* Counsel states that the applicant's youngest child suffers from asthma and has been admitted to the hospital for treatment for pneumonia on several occasions. *Id.* at 4-5. Counsel contends that the applicant's spouse is unable to provide this child with the care she needs in the absence of the applicant. *Id.* The record reflects that two of the applicant's four children have reached the age of majority. *Id.* at 2. The record fails to demonstrate that the adult children of the applicant are unable to assist their father in caring for their younger siblings.

Counsel contends that if the applicant is forced to return to Mexico, the applicant's spouse will incur the expenses associated with maintaining two households. *Id.* at 3. 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 AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would 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.