



U.S. Citizenship
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FILE:

Office: CHICAGO, IL

Date: MAY 09 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL and 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 his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his spouse and child.

The district director concluded that the applicant did not establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility to the United States. The application was denied accordingly. *District Director Decision*, dated December 31, 2002.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility to the United States. She states that the applicant's spouse would suffer financially from the family separation. *Counsel's Appeal's Brief*, undated.

The record includes, but is not limited to: the applicant's affidavit, the U.S. citizen spouse's affidavit, the applicant's marriage certificate, the birth certificate of the applicant's daughter, the spouse's naturalization certificate, the birth certificate of the applicant, a list of monthly expenses, pay stubs for both the applicant and his spouse, 2002 W-2 Forms for the applicant and his spouse, and copies of monthly bills.

In the present application, the record indicates that the applicant entered the United States in 1990 and was removed from the United States in August 2000. He then re-entered the United States without inspection in September 2000. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 2000, the date he was removed from the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his August 2000 removal from the United States. Therefore, the applicant is 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.

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.

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 or the alien's children experience due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. In her affidavit, the applicant's spouse asserts that it would be an extreme hardship for her to reside in Mexico because her entire family is in the United States, including two U.S citizen children; she could not find employment in Mexico and could not afford childcare even if she could find employment. She also asserts that her mother currently provides childcare for her children and she would not feel comfortable leaving her children with a stranger in Mexico. The AAO notes that the applicant's spouse is employed at a Medical Center where she is a Home Visitor. The AAO also notes that no documentation was submitted to show that this type of employment would be unavailable to the applicant's spouse in Mexico. Counsel must submit documentation to support the applicant's claims. In the current application counsel has not done so, therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse asserts that she would suffer extreme hardship in the form of financial difficulties and emotional hardship. The applicant's spouse asserts that she needs two incomes to support her family. The documentation submitted shows that in 2002 the applicant earned \$24, 303.93 and the applicant's spouse earned \$18, 012.80. The documentation also shows that the couple's expenses for one year are approximately \$26, 000. The AAO notes that as stated above, the spouse's mother provides childcare for her children and the spouse's entire family resides in the United States, with the exception of two elderly grandparents. However, counsel submitted no documentation concerning the spouse's ability to find new employment and/or receive help from her family in the United States if the

applicant is removed from the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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.

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.

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 he 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.