



U.S. Citizenship  
and Immigration  
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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: MAY 09 2006

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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, CA. 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 was also found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on January 2, 2001. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated October 19, 2004.

On appeal, counsel asserts that the applicant did establish that her spouse would suffer extreme hardship if she were removed from the United States. *Form I-290B*, dated November 17, 2004.

The record includes, but is not limited to, an affidavit from the applicant's spouse dated December 15, 2004; the naturalization certificate of the applicant's spouse; the birth certificates for the applicant's two sons born in the United States; copies of the legal permanent resident cards of the applicant's four brothers; the applicant's marriage certificate; a letter from [REDACTED] and the 1999 State Department Human Rights Report for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States without inspection in 1995. The applicant remained in the United States until December 23, 1999. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 23, 1999, the date of her departure from the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her December 23, 1999 departure 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.

The record also indicates that on January 2, 2001 the applicant attempted to enter the United States using a passport and visitor's visa that was not legally issued to her. Therefore, the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an 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 and a section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act are 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 or her U.S. citizen children experience due to separation is irrelevant to section 212(a)(9)(B)(v) and section 212(i) 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 he resides in Mexico or in the event that he resides in the United States, as he 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 her spouse in the event that he resides in Mexico. The applicant's spouse states that his parents, brothers, and many other relatives live in the United States. He states that he comes from a Mexican-Catholic family and wants his children to grow up in the United States, close to his immediate family. *Spouse's Affidavit*, dated December 15, 2004. The applicant also submitted a State Department country conditions report for Mexico, but fails to establish that by moving to Mexico he would not be able to maintain his well-being. There is no evidence of any safety or health problems moving to Mexico might cause or any documentation supporting the assertion that he would not be able to find employment in Mexico. The AAO notes that the applicant's spouse was born in Mexico. The applicant's spouse states numerous times that he is from a Mexican-Catholic family and wants his children to be raised Mexican-Catholic. Therefore, the applicant would have very little difficulty adapting to cultural norms in Mexico. Furthermore, the AAO notes that relocation to a foreign country generally involves some inherent difficulties such as finding new employment and a new residence, however, 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 her spouse remains in the United States. The applicant's spouse states that he and his wife have been together for seven years and that without his wife's daily work as a housewife he would not enjoy all the benefits of being a father. The applicant cooks, does the laundry, shops, and provides childcare for the family. He states that their separation would cause extreme emotional and psychological hardship and that he is suffering from severe stress and anxiety. The AAO notes that there is no evidence regarding the applicant's emotional distress. In addition, the spouse states that he would suffer financially because he would have to support two households, one in the United States and one in Mexico. *Spouse's Affidavit*, dated December 15, 2004. The record indicates that the spouse's income was approximately \$24,000 for the 2001 tax year. Although the applicant does not contribute to the family income, she does provide childcare for the couple's two children, however no evidence was submitted to support the spouse's claims of extreme financial hardship. The record contains no evidence as to the family's expenses, the cost of childcare and/or why other family members could not help with the added responsibilities. Therefore, a thorough review of the entire record does not reflect that separation will result in extreme hardship to the applicant's spouse.

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.

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.