



U.S. Citizenship
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FILE:

[Redacted]

Office: PHOENIX

Date: MAY 23 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)

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix. 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with her U.S. citizen husband and children.

The district director found that, based on the evidence in the record, the applicant had failed to establish that a qualifying relative would suffer extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated July 29, 2004.

On appeal, counsel for the applicant asserts that the district director failed to consider hardships to the applicant's husband in aggregate, and thus erred as a matter of law. *Statement from Counsel on Form I-290B*, dated August 30, 2004. The applicant stated that her husband will suffer emotional and economic hardship should she be prohibited from remaining in the United States. *Statement from Applicant in Support of Form I-601 Application*, submitted on December 30, 2002.

The record contains statements from the applicant in support of the Form I-601 application; a statement from counsel on Form I-290B; a copy of the applicant's husband's naturalization certificate; copies of the birth certificates of the applicant's children; a copy of the applicant's marriage certificate; a letter from a school psychologist regarding the applicant's history and mental health status; documentation on conditions in Mexico; a sworn statement from the applicant regarding her entries to the United States; a copy of the applicant's birth certificate; a letter verifying the employment of the applicant's husband, and; copies of tax documents for the applicant and her husband. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on August 30, 2004. However, as of February 24, 2006, the AAO had received no further documentation or correspondence from the applicant or counsel. On February 24, 2006, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete.

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 matter, the record indicates that the applicant entered the United States in 1991 without inspection. On June 29, 1999, she filed a Form I-485, Application to Register Permanent Residence or Adjust Status. She departed the United States on March 15, 2001, and reentered on April 1, 2001 pursuant to an advance parole document. The applicant accrued unlawful presence in the United States from April 1, 1997, the date the unlawful presence provisions were enacted, until June 29, 1999, the date she filed her Form I-485 application. This period totals over two years. Accordingly, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act 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 does not contest her inadmissibility on appeal.

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 applicant herself experiences upon being found inadmissible 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors

concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant asserts that the district director failed to consider hardships to the applicant’s husband in aggregate, and thus erred as a matter of law. *Statement from Counsel on Form I-290B*, dated August 30, 2004.

The applicant stated that her husband will suffer emotional hardship should she be prohibited from remaining in the United States. *Statement from Applicant in Support of Form I-601 Application*, submitted on December 30, 2002. The applicant indicated that her husband has no emotional, familial, cultural, or religious ties to Mexico, and that all of his immediate family members were born in the United States. *Id.* at 4-5. The applicant stated that she provides the emotional support for her family, thus suggesting that her husband would be compelled to forgo such support should they be separated. *Id.* at 6. She provided that her husband would endure anxiety if his wife and children were in Mexico due to the risk of harm there. *Id.*

The record contains references to hardships to the applicant’s children and the applicant. *Id.* at 5. The applicant submitted a letter from [REDACTED] a school psychologist, in which [REDACTED] discusses the applicant’s history and challenges due to being born with a cleft lip and palate. *Letter from [REDACTED]* dated December 17, 2002. The applicant explained that her husband would be affected emotionally by hardship to her and her children. *Statement from Applicant in Support of Form I-601 Application* at 5.

The applicant explained that her husband would suffer economic hardship if she is prohibited from remaining in the United States. She stated that her husband has been employed with the same employer for five years, and that he would have difficulty securing a comparable position in Mexico due to his age of 41 years. *Id.* at 4. She further provided that the expense of communicating and traveling between the United States and Mexico would restrict her communication with her husband should they be separated. *Id.* The applicant stated that her husband would have to sell their home in order to relocate to Mexico. *Id.* at 5. The applicant stated that her husband would have difficulty if he is compelled to provide childcare for their children and work simultaneously. *Id.* at 6.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and her children will endure if the applicant departs. However, hardship to the

applicant or her children is not a relevant concern in the present matter. Section 212(a)(9)(B)(v) of the Act. The AAO appreciates the challenges that the applicant has faced due to being born with a cleft lip and palate. Further, the AAO acknowledges that the applicant and her children will bear significant consequences if they are separated from each other or the applicant's husband, or if they relocate to Mexico. Yet, only hardship to the applicant's husband may be properly considered in this section 212(a)(9)(B)(v) waiver proceeding.

Direct hardship to the applicant or her children is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. It is further understood that the applicant's husband would suffer emotional hardship due to concern he would have over the applicant and his children if they relocate to Mexico without him. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in hardships to the applicant and his children. However, the applicant has not established that her husband will experience emotional consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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. Thus, the applicant has not shown that her husband's emotional hardship will rise to the level of extreme hardship.

The applicant explained that her husband would suffer economic hardship if she is prohibited from remaining in the United States. However, the record does not contain a clear account of the currently monthly expenses for the applicant's husband, or estimates for expenses he will incur if the applicant departs the United States. The applicant's husband has maintained steady employment in the United States for a period of at least five years at a salary above the poverty line. The applicant has not shown that, should her husband remain in the United States, he will be unable to continue to meet his financial needs, despite the expense of anticipated travel and long-distance communication. While the applicant asserts that her husband would be unable to secure sufficient employment in Mexico, she has not submitted adequate documentation to support this contention. The applicant references that her husband would be compelled to sell their home if he relocates to Mexico, yet the record contains no direct evidence that the applicant and her husband own real property.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not established that her husband would endure economic consequences that go beyond those ordinarily expected when a spouse or close family member is deemed inadmissible and departs the United States.

The applicant provided that her husband would experience significant hardship if he relocates to Mexico, as he has no emotional, familial, cultural, or religious ties to Mexico, and all of his immediate family members were born in the United States. However, as the applicant's husband is a native of Mexico, it is evident that he would not be faced with the challenges of adapting to an unfamiliar language or culture should he return there. Further, the applicant has not provided documentation to show what relatives of her husband were born in the United States or are currently residing here, other than their two children. The applicant has not shown that her husband cannot reasonably relocate to Mexico if he wishes to maintain family unity. Yet, it is noted that, as a U.S. citizen, the applicant's husband is not required to reside outside of the United States as a result of the applicant's inadmissibility.

All prospective hardships to the applicant's husband have been considered separately and in aggregate. The applicant has not shown that the hardships to her husband render his situation more severe than that ordinarily expected when a spouse or close family member departs the United States. Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.