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U.S. Department of Homeland Security
20 Massachusetts Ave., Rm. 3000
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U.S. Citizenship
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Services

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FILE:



Office: CHICAGO, IL

Date: SEP 08 2006

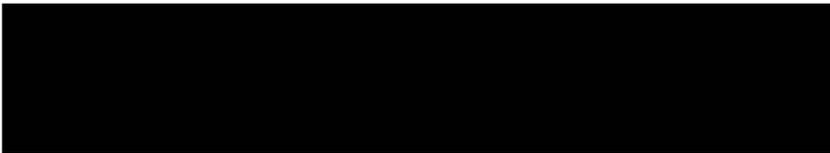
IN RE:



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 "James W. Wiemann" with "for" written below it.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL. 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 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 April 12, 2004.

On appeal, counsel asserts that the applicant has established that her U.S. citizen spouse and children will suffer extreme hardship as a result of the applicant's inadmissibility. *Counsel's Brief*, dated May 13, 2004.

The record includes, but is not limited to the following documents: an affidavit from the applicant's spouse; a letter from the applicant's children's teachers; copies of the applicant's medical records; character letters for the applicant; a letters from the applicant's sons; certificates and awards for the applicant's children; and copies of the applicant's spouse's 2001 income tax return. 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 on a tourist visa in August 1997. The applicant remained in the United States until April 6, 1999 when she went on vacation with her family to Niagara Falls, Canada. Therefore, the applicant accrued unlawful presence from when her authorized stay under her tourist visa expired in February 1998 until April 6, 1999, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her April 6, 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.

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 or her 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 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 in his affidavit that he was born in Chicago, IL, but lived in Mexico for a period of time when he met, dated and married the applicant. The applicant's children also resided in Mexico until the youngest child was five years old. In 1997 the applicant's spouse decided to move his family to the United States because of an economic downturn in Mexico. The applicant's spouse works as a truck driver and states that it would be an extreme hardship for him to leave his job and relocate to Mexico. The applicant also states that he is concerned that his children would not receive the same level of education and healthcare in Mexico. The applicant's spouse states that the applicant is a cancer survivor and needs to stay in the United States where she can continue to receive treatment and medication. As stated above, hardship to the applicant and to the applicant's children are irrelevant to section 212(a)(9)(B)(v) waiver proceedings. The applicant's spouse did not submit any documentation to support his assertions regarding the country conditions in Mexico. Furthermore, the AAO notes that relocation to a foreign country generally involves some inherent difficulties such as finding new employment, however, the current 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. Counsel states in her brief, that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant. Counsel states that the applicant's spouse could not meet the demands of his job and the demands of taking care of his children without the help of the applicant. In support of these assertions, the applicant submitted letters from the applicant's children's teachers, showing that the applicant is the primary caretaker for the children. The record does not contain

documentation to show that the applicant's spouse could not provide childcare for his children in the absence of the applicant. The applicant's spouse has not submitted any documentation to show the extent of the emotional effects separation from the applicant would have on him. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, is typical to individuals separated as a result of removal 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 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.