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



U.S. Citizenship
and Immigration
Services

H3

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[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date: **SEP 15 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. 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 her parents are lawful permanent residents. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her spouse and parents.

The district director found that a review of all the documentation in the record does not establish the existence of emotional, financial and personal hardships to the applicant's spouse that would result from the applicant's removal. The director adds that the hardships do not reach to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated June 8, 2004.

On appeal, counsel asserts that the applicant provided sufficient evidence to establish that her U.S. citizen spouse and her lawful permanent resident parents would suffer extreme hardship in the event that the applicant was removed from the United States. Counsel also states that the positive factors in the applicant's case outweigh the negative factors. *Form I-290B*, dated June 8, 2004.

In support of these assertions, counsel submits a statement from the applicant's mother; a statement from the applicant's father; a statement from the applicant's spouse; a statement from the applicant; the applicant's son's birth certificate; a letter from the site director of the Community Child Care Advocates regarding the applicant's child being enrolled in preschool; a letter from the office assistant of Sun Terrance Elementary School regarding the applicant's second child being enrolled in kindergarten; a statement of the applicant's family's expenses for one month; copies of health insurance cards for the applicant, her spouse and their two children; and employment letters for the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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 without inspection on September 30, 1995. On August 2, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 2, 2001 the applicant entered the United States after using the advanced parole she was granted to depart the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized 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 August 2, 2000, the date of her proper filing of the Form I-485. In applying to adjust her status to that of Lawful Permanent Resident, the applicant is seeking admission within 10 years of her 2001 departure from the United States. The applicant is, therefore, 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.

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 upon removal 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 Bureau 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.

The applicant's mother states in her declaration, dated August 2, 2004, that she and the applicant's father live with the applicant and her spouse. She states that she cares for the applicant's children when she is at work. The applicant's mother states that it would be a hardship for the family if the applicant is removed from the United States. She states that the children would especially suffer because they would face a situation where they were either living in the United States and separated from their mother or living in Mexico and separated from their

father. The applicant's mother adds that the applicant and her spouse are both suffering emotionally and they worry about their situation. The applicant's father states in his declaration, dated August 2, 2004, that the applicant's children would suffer if they had to leave the United States because they were born in the United States. The applicant's spouse states in his declaration dated, May 20, 2004, that he would suffer emotionally from being separated from the applicant. He also states that they would suffer economically if they moved to Mexico and he would not be able to pay for his children's medical care nor would he be able to pay for them to go to school. The applicant submitted copies of the family's medical insurance cards establishing that they have medical insurance in the United States. The applicant submitted a monthly budget showing expenses in the amount of \$3500.00. The applicant's spouse also submitted a letter from his employer stating that he makes \$6.75 per hour, plus tips and gratuity. *Employer Letter*, dated March 31, 2004.

The AAO notes that the record does not reflect the spouse's total income because it does not account for the added amounts of gratuity. The AAO also notes that the applicant's spouse has not established that other family members would not be able to help him and his children if the applicant were removed from the United States. In addition, the applicant has not provided any country information to support the assertions regarding country conditions in Mexico. She also failed to establish the extent of the emotional suffering her spouse is experiencing as a result of her possible removal. The AAO finds that the applicant has not established that her qualifying family members would suffer extreme hardship as a result of relocating to Mexico. The AAO also finds that the applicant has not established that her qualifying members would suffer extreme hardship as a result of her removal from the United States. The AAO recognizes that the applicant's spouse and parents will endure hardship as a result of separation from the applicant. However, their 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 and/or parents 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.