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U.S. Citizenship
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Services

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FILE:

Office: PHOENIX, AZ

Date: JUL 12 2007

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that her husband would suffer extreme hardship if she were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts, through counsel, that the cumulative hardship factors in the present matter establish that her husband would suffer extreme hardship if her Form I-601 application is denied.¹

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny 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.

The record reflects that the applicant married her husband in Mexico on December 12, 1996, and that the applicant subsequently entered the United States without admission on an unknown date in December 1996. The applicant remained unlawfully in the United States until May 26, 1998, at which time she departed and illegally reentered the United States approximately one month later. The applicant's husband became a naturalized U.S. citizen on September 17, 1999. filed a Form I-485, Application to Register Permanent Residence or Adjust Status on the applicant's behalf, on July 28, 2000. Because the applicant was unlawfully present in the United States for more than one year, between April 1, 1997 and May 26, 1998, she is subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department 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,

¹ Counsel indicated on the Form I-290B Notice of Appeal to the Administrative Appeals Office (Form I-290B) that he would send a brief and or additional evidence to the AAO within 30 days of filing the Form I-290B. No brief or evidence was received by the AAO within the requested time period. The AAO subsequently faxed a request for copies of any documents that may have been submitted by counsel in the applicant's case. Counsel was advised to respond to the faxed AAO request within five business days. The AAO received no response from counsel.

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 applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. It is noted that U.S. citizen and lawful permanent resident children are not considered to be qualifying relatives for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The hardship claims made with regard to the applicant's three children shall therefore not be considered, except as they relate to extreme hardship to the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The record contains the following evidence relating to [REDACTED]'s extreme hardship claim:

A May 2, 2003, letter written by [REDACTED] stating in pertinent part that he was separated from his wife and children once in the past, and that the separation caused him to experience depression and despair. [REDACTED] states that separation from the applicant would cause him to suffer, "depression, indifference, anxiety, despair and lack of hope towards the future." [REDACTED] states further that he believes a family should be united, and he states that he enjoys living in the United States with his wife and three children, and offering the educational, moral and civic benefits of the United States to his family.

An April 4, 2003 Psychiatric Evaluation from [REDACTED] stating, with regard to [REDACTED], that he became clinically depressed and compromised at work during a previous separation from his family, and that he would suffer financially if his wife were removed from the United States.

An April 9, 2003 letter from [REDACTED] stating that [REDACTED] has been employed with the company since May 22, 1996, and indicating that [REDACTED] will remain employed with the company as long as there is work available.

Copies of the family's monthly utility expenses.

A copy of the yearly inscription costs for the Bilingual College, New Way School in Mexico, reflecting that primary school costs are \$1025/month.

The record also contains two letters from friends confirming [REDACTED] employment and his family's good moral character. In addition, the record contains a medical letter reflecting that the applicant was treated in Mexico for severe arterial hypertension in 1998. The AAO finds that these letters lack probative value in the present matter, as they do not relate to hardship that [REDACTED] would suffer if the applicant were denied admission into the United States.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that her husband would suffer hardship that goes beyond that ordinarily associated with removal or inadmissibility, if he remained in the U.S. without the applicant. The evidence in the record fails to demonstrate that the [REDACTED] relies on the applicant financially, and the record lacks evidence to indicate that the applicant's absence would cause [REDACTED] extreme financial hardship. Moreover, the AAO notes the U.S. Supreme Court holding in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." The applicant also failed to establish that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. The Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, the Psychiatric Evaluation contained in the record is vague and uncorroborated by independent medical or psychiatric treatment evidence, and it does not establish that [REDACTED] would suffer emotional or psychological hardship beyond that normally associated with removal or inadmissibility, if the applicant's Form I-601 application were denied. The record contains no other evidence to indicate that [REDACTED] would suffer extreme hardship if the applicant were denied admission into the United States and he remained in the United States.

The applicant also failed to establish that her husband would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States, and [REDACTED] returned with his family to Mexico. The record reflects that [REDACTED] was born and raised in Mexico, and that he has family in Mexico. In addition, the record fails to establish that [REDACTED] would suffer extreme financial hardship if he returned to Mexico. The employment letter contained in the record does not identify [REDACTED] job title, salary or benefits, or [REDACTED] job history with the company. It is further noted that the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish

eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.