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**U.S. Citizenship  
and Immigration  
Services**

H3

[REDACTED]

FILE:

Office: PHOENIX, AZ

Date: MAY 30 2007

IN RE:

[REDACTED]

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:

[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 Acting District Director, Phoenix, Arizona, denied the waiver application, and it 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 is 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 the spouse of a lawful permanent resident and the mother of three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated October 27, 2005.

The record reflects that, on May 28, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by her lawful permanent resident spouse, [REDACTED] (Mr. [REDACTED]). On September 7, 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart, returning to the United States on September 21, 1999. The applicant has not departed the United States since that date. On November 19, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Phoenix, Arizona District Office. The applicant testified that she had originally entered the United States without inspection on April 15, 1990 and had remained in the United States without authorization until she utilized the advance parole in 1999. On August 27, 2002, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the acting district director failed to consider each factor individually and cumulatively in determining extreme hardship. Counsel contends that the acting district director misapplied case law in weighing the equities to determine whether favorable exercise of discretion was warranted. Finally, counsel contends that the acting district director failed to consider the central purpose of the waiver, family unity, because the decision failed to consider the indirect hardship to the applicant's spouse as the sole parent responsible for three U.S. citizen children. *See Form I-290B*, dated November 28, 2005. On Form I-290B counsel indicated she would file a brief and/or additional evidence within 30 days. On April 5, 2007, the AAO informed counsel that she had five days in which to resubmit any documentation she had previously provided in support of the appeal. Counsel did not forward a brief and/or additional evidence to support the appeal. Accordingly, the record is complete. The entire record was reviewed in rendering a decision in this case.

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 acting district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from April 1, 1997, the date of enactment of the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act, until May 28, 1999, the date on which she filed the Form I-485. Counsel does not contest the acting district director's determination of inadmissibility.

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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) cases. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

Since Mr. [REDACTED] is a lawful permanent resident and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether he resides in the United States or Mexico.

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 record reflects that, on September 26, 1992, the applicant married Mr. [REDACTED]. Mr. [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant and Mr. [REDACTED] have a 15-year old son, a 14-year old son and a ten-year old daughter who are U.S. citizens by birth. The record reflects that the applicant is in her 30's and Mr. [REDACTED] is in his 40's. There is no evidence in the record that Mr. [REDACTED] or the children have any health concerns.

Counsel contends that the central purpose of the waiver, family unity, must be an important consideration in the assessment of hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute "extreme hardship."

On appeal, counsel contends that the applicant has established her spouse would suffer extreme hardship. Mr. [REDACTED], in his affidavit, states that he and the children need the applicant. He states that they own two houses and he would have to sell their properties and care for the children if the applicant were to return to Mexico. He states that the children do not know any other country than the United States and want the applicant to remain in the United States. The applicant, in her affidavit, states that her children are very young and need her. She states that she wants to keep working by her family's side in the United States and would have to leave her husband and children alone if she had to return to Mexico.

Financial records indicate that, in 2000, Mr. [REDACTED] earned \$35,933. The record shows that, even without assistance from the applicant, Mr. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The AAO acknowledges that Mr. [REDACTED] would essentially become a single parent, but the record does not establish that this responsibility is a hardship beyond those commonly suffered by aliens and families upon

removal. While Mr. [REDACTED] may have to lower his standard of living and sell properties or move from his current accommodations, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Mr. [REDACTED] if he had to support himself and the children without income from the applicant, even when combined with the emotional hardship described below.

There is also no evidence in the record that establishes that Mr. [REDACTED] or his children have a physical or mental illness that would cause Mr. [REDACTED] to suffer hardship beyond that commonly faced by aliens and families upon removal. While Mr. [REDACTED] concern that his children will essentially be raised in a single-parent environment is noted, this is a hardship routinely encountered by aliens and families upon removal. Additionally, while the AAO acknowledges that Mr. [REDACTED] and his children will experience distress and depression as a result of their separation from the applicant, the record does not distinguish these emotions from those commonly felt by aliens and families upon removal. Accordingly, the applicant has not established that her spouse would suffer extreme hardship if he remained in the United States without her.

The applicant and Mr. [REDACTED] do not contend in their affidavits that Mr. [REDACTED] would suffer hardship if he were to return to Mexico with the applicant. The AAO is, therefore, unable to find that the applicant's spouse would experience hardship should he return with the applicant to Mexico. Finally, as previously noted, Mr. [REDACTED] is not required to reside outside of the United States as a result of the denial of the applicant's waiver request and, as discussed above, Mr. [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [REDACTED] will face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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. The AAO notes that counsel's contentions in regard to weighing of after-acquired equities relate to whether the applicant warrants a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.