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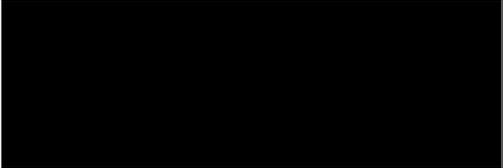
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: NOV 20 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 waiver application was denied by the Officer-In-Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 record indicates that the applicant is married to a lawful permanent resident of the United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated November 24, 2005.

On appeal, the applicant, through counsel, asserts that the OIC "erred by failing to properly consider all of the hardship and the totality of the circumstances in this case and the cumulative effect of the hardship." *Form I-290B*, filed December 27, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's marriage certificate, statements from the applicant's husband, and numerous affidavits and statements from the applicant's friends and family. The entire record was reviewed and considered in arriving at 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.

The AAO notes that the record contains several references to the hardship that the applicant's lawful permanent resident and United States citizen siblings would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawful resident spouse or parent. Congress does not mention extreme hardship to United States citizen or lawful permanent resident siblings. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's siblings will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States without inspection in January 1992. On June 25, 1994, the applicant married [REDACTED] a lawful permanent resident, in Illinois. On March 27, 1995, the applicant's husband filed a Form I-130 on behalf of the applicant. On October 21, 1995, the Form I-130 was approved. In April 2005, the applicant departed the United States. On April 15, 2005, the applicant filed a Form I-601. On November 24, 2005, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her lawful permanent resident husband.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until April 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her April 2005 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that if the applicant is denied entry into the United States, "it will result in extreme hardship" to the applicant's husband "who is a lawful permanent resident of the U.S. and to [the applicant's] siblings, nieces and nephews, who are also either lawful permanent residents or U.S. citizens." *Brief in Support of the*

Appeal, page 1, filed December 27, 2005. The applicant's husband states he "worked in the same company in Chicago for 30 years, from 1973-2003. The company closed, and now [he] only work[s] from time to time in a temporary agency...[His] wife is 62, and she can't work in Mexico. Without her, [he doesn't] know what to do. She was always here with [him], she cooked and took care of everything while [he] went to work." *Declaration of* [REDACTED] dated December 12, 2005. Counsel states that if the applicant's husband joins the applicant in Mexico, "he would be forced to abandon the only family he and [the applicant] know, as well as his job, his home, his friends, and his church." *Brief in Support of the Appeal*, page 8, *supra*. Counsel states the applicant's husband "cannot read or write well, and received only two years of formal education." *Id.* at 3. The AAO notes that the applicant's husband has work experience, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the applicant's husband is a native of Mexico, who spent his formative years in Mexico, he speaks Spanish, and he has some family ties to Mexico. *See Brief in Support of the Appeal*, page 7, *supra* ("[The applicant's husband] has only one half sister in Mexico."). The applicant's nephew, [REDACTED] states the applicant's husband "needs [the applicant] very much. They were always together wherever they went. Now, he feels very sad." [REDACTED], dated December 12, 2005; *see also letter from* [REDACTED] the applicant's nephew, undated ("[The applicant's husband] is very sad and lonely."); *see also letter from* [REDACTED] the applicant's niece, undated ("[The applicant's husband] needs [the applicant] to come back. He is very worried and sad since she went to Mexico for her appointment, and her pardon was denied."). The AAO notes that there are no professional evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant's husband mentally, emotionally, and/or psychologically.

The applicant's brother [REDACTED] requests that the applicant "be pardoned, and that she be given a visa so that she can come back to live [there] in Chicago with [them]." *Letter from* [REDACTED] undated; *see also letter from* [REDACTED], the applicant's brother, undated ("[He is] asking that [the applicant] be given a pardon so that she may come to live with her husband, because they are suffering a lot, and [his] son misses her very much."); *see also letter from* [REDACTED] the applicant's sister-in-law, undated ("[The applicant's brother] is very sick. He has many different illnesses...He cannot travel to Mexico because his health doesn't allow him to do so. He asks for his sister, and he wants to see her. He cannot speak anymore, but he asks for her with hand gestures, and he gets sad."); *see also letter from* [REDACTED], the applicant's sister, dated December 11, 2005 ("[She is] asking that [the applicant] be pardoned. She is alone in Mexico, and is elderly."); *see also letter from* [REDACTED], the applicant's niece, dated December 11, 2005 ("[They] want [the applicant] to be pardoned and to be given a visa because [they] need her [there] in Chicago because [her] mother is very sick and [the applicant] helps [them] take care of her. [They] all work."); *see also letter from* [REDACTED] the applicant's niece, dated December 11, 2005 ("[They] hope that [the applicant] is pardoned and that she is given a visa so that she may come and be with all of [their] family since none of [their] family lives in Mexico anymore."); *see also letter from* [REDACTED], dated December 11, 2005 ("[He] used to be a college student and [the applicant] help[ed] [him] by providing [him] with cooked meals and washing [his] clothes. She helped [him] out in [his] times of great needs. [He] couldn't have completed [his] studies without the help of [the applicant]."); *see also letter from* [REDACTED], the applicant's nephew, undated ("[The applicant] feels very lonely these days in Mexico. All of her family is here in the United States. [They] all miss her very much."); *see also letter from* [REDACTED], the applicant's nephew, undated ("All of [the applicant's] siblings are here in the United States, and she is alone in Mexico. She and her husband don't

have children, and they are both sad, with one being here and the other in Mexico.”); *see also letter from* [REDACTED], the applicant’s niece, dated December 11, 2005 (“[The applicant] is a good person, and she isn’t a danger to society.”); *see also letter from* [REDACTED], undated (“[He] beg[s] that [we] forgive [the applicant] and permit her entrance back into this great country...She is a catholic that is always attending mass when ever mass is conducted.”); *see also letter from* [REDACTED], the applicant’s husband, undated (“If [the applicant] doesn’t return to Chicago, she will feel sad, depress [sic] and lonely, base[d] that she don’t have any family member[s] or friends in Mexico.”). The AAO notes that the letters and statements from the applicant’s family address the hardships that they are suffering by being separated from the applicant and the hardships that the applicant is suffering by being separated from her family. However, as noted above, the applicant’s siblings, nieces and nephews are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. Additionally, the AAO notes that the hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant’s spouse if he remains in the United States, maintaining his employment. As a lawful permanent resident, the applicant’s husband is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Counsel states the applicant’s husband is “a sixty (60) year old lawful permanent resident who depends on [the applicant] for emotional and moral support, to contribute to their household and to care for him, as they grow old together.” *Brief in Support of the Appeal*, page 1, *supra*. The AAO notes that the applicant has been residing in Mexico since April 2005, and there is no evidence that the applicant contributes any financial assistance to her husband or that she could not find gainful employment in Mexico. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). Additionally, the AAO notes that the applicant and her husband have been separated since April 2005, and it has not been established that their current separation is causing the applicant’s husband hardship beyond that which would normally be expected. The applicant’s husband states that he “rent[s] from [his] wife’s brother...and [he] pay[s] him \$400 per month to live in a basement apartment.” *Declaration of* [REDACTED]. The AAO notes that it has not been established that the applicant’s brother will not allow the applicant’s husband to continue to reside in his basement. The applicant’s husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 husband 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.