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U.S. Citizenship  
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FILE:



Office: MEXICO CITY, MEXICO Date:

FEB 04 2008

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Excludability 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Mexico City, Mexico, denied the Form I-601, Application for Waiver of Ground of Excludability under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). On October 2, 2007, the matter was rejected as untimely by the Administrative Appeals Office (AAO). The matter will be reopened *sua sponte* based on new information indicating that the appeal was timely filed. The appeal will be dismissed.

The record reflects that the applicant is a 39-year-old native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record reflects that the applicant's spouse, \_\_\_\_\_ is also a citizen of Mexico but has resided in the United States as a lawful permanent resident since 1990. The couple was married on February 11, 1994 in Mexico, and has one U.S. citizen child. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her spouse. The applicant entered the United States without inspection in September 1994 and remained in the United States unlawfully until July 1998. The applicant seeks a waiver of inadmissibility in order to return to the United States.

The district director denied the waiver of inadmissibility finding that the applicant had failed to establish extreme hardship to her spouse and denied the application accordingly.

On appeal, the applicant states that the district director erred in finding that she had not established extreme hardship to her spouse. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that no brief or additional evidence accompanied the appeal. The AAO will consider the matter *de novo* on the basis of the evidence previously submitted.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 district director found the applicant inadmissible on the basis of her unlawful presence in the United States. The record reflects, and the applicant does not dispute, that she entered the United States without

inspection in September 1994 and remained unlawfully until July 1998. The applicant thus accrued unlawful presence in the United States for a period of more than one year and became subject to a 10-year bar to admission. The AAO finds that the applicant is inadmissible as charged. The question remains whether she is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to the applicant's U.S. citizen daughter is also not a permissible consideration under the statute.

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. 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).

The applicant's spouse [REDACTED] is a 36-year-old native of Mexico who has been a lawful permanent resident of the United States since 1990. The applicant and her spouse were married in 1994 in Mexico. The applicant's spouse claims that he would face extreme hardship should his wife not be allowed to return to the United States. Specifically, the applicant's spouse states that their separation is causing emotional and financial hardship. *See Applicant's Spouse's Letter dated February 2, 2006.* He also states that living conditions and educational opportunities for his child in Mexico are poor. *Id.* The applicant's spouse claims that the family's separation results in him having to maintain two households, and that, in turn, results in financial hardship. *Id.*; *see also Applicant's Spouse's Letter dated October 20, 2005.*

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 faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be

granted in every case where a qualifying relationship exists. 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). 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); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9<sup>th</sup> Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s spouse rises to the level of extreme. The AAO notes that the record contains a copy of a Request for Further Evidence issued to the applicant explaining in detail the type of evidence required to establish extreme hardship. The AAO further notes that the applicant’s spouse’s letters are unsupported by documentary evidence relating to the family’s finances, community and family ties, or health. The letters do not explain in sufficient detail the claimed hardship.

The AAO has considered the applicant’s spouse’s hardship given his decision to remain in the United States and due to his separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating that “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances”).

The AAO has evaluated the applicant’s spouse’s hardship claims individually and in the aggregate. Although the AAO acknowledges the applicant’s spouse’s claims that he would experience hardship if he continues to be separated from the applicant, the AAO finds that his hardship is typical for any person in his circumstances and does not rise to the level of “extreme” as required by the statute. The AAO finds that the applicant 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. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.