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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX, AZ Date: JAN 07 2008

IN RE: Applicant: [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:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona 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. The applicant initially entered the United States without inspection in 1985. She subsequently departed and reentered the United States with advance parole authorization on November 25, 2001. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until April 28, 2001, the date she filed a Form I-485 Application to Register Permanent Resident or Adjust Status. The applicant was thus 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 seeks a waiver of inadmissibility in order to remain with her U.S. citizen spouse and children in the United States.

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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated December 23, 2005.

In support of the appeal, the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B). The Form I-290B stated the following:

The reason I travelled (sic) to Mexico was that this was the only way I could have a life-saving hysterectomy for a malignant tumor. The operation was not available to me here in the U.S. because I was not a legal resident yet. The CIS knew this and granted advance parole. Furthermore, the CIS did not give sufficient weight to the hardship to my husband if I am not allowed to remain in the U.S.

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 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 held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:**

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

This matter arises in the Phoenix district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th 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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

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 his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention

extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant, their children or their grandchildren cannot be considered, except as it may affect the applicant's spouse.

To begin, the applicant provides documentation that confirms that her youngest child, [REDACTED] has been classified as a "special needs" student and receives special education services and individual attention at school to ensure his academic success. However, no evidence has been provided that outlines what specific assistance the youngest child needs from his parents and what hardship the applicant's spouse, the qualifying relative, would face were the applicant not residing in the United States to assist their youngest child with respect to his educational needs.

Moreover, the applicant provides an evaluation from [REDACTED] regarding the hardships that the applicant's children would face were the applicant removed. In said evaluation, [REDACTED] states the following: "...Since the threat of her mother's deportation, [REDACTED] [the applicant's daughter] has been experiencing stomach aches, episodes of uncontrollable crying, hair loss and frequent anxiety, all signs of depression at the possibility of separation from her mother, who is at the center of her support system. The actual deportation of [REDACTED] [the applicant] will increase the severity of these symptoms, affecting not only Josephina, but her ability to care for and nurture her children...Mr. and Mrs. [REDACTED]'s other children, [REDACTED] and [REDACTED] have also been dramatically affected by the possible deportation of their mother. [REDACTED] has experienced hair loss and [REDACTED] has been experiencing insomnia, headaches, severe nervousness and anger..." *The Evaluation of the Effect of the Deportation of [REDACTED] [REDACTED] on her U.S. Citizen Husband and 3 Children*, dated May 1, 2005.

[REDACTED] in her evaluation, also references the hardships that the applicant's spouse will face were the applicant removed from the United States. As stated by [REDACTED] "...[REDACTED] [the applicant's spouse] has become extremely depressed, preoccupied and has been experiencing insomnia, headaches, and is unable to concentrate at work...[REDACTED] is extremely distraught about the possibility of being separated from his wife. He is concerned about his ability to manage the finances, as his wife has always managed the family budget, paid the bills, and organized the home...In addition, [REDACTED] fears that he will be unable to care and support their children without her, due to his long and arduous work hours..." *Id.* at 13.

Although the input of any professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's family and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse and/or children or any history of treatment for the conditions referenced in [REDACTED]'s evaluation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. While the applicant's spouse may need to make alternate arrangements with respect to the maintenance of the household and the children's psychological, physical and scholastic care, it has not been shown that such arrangements would cause extreme hardship for the applicant's spouse.

The applicant also states that her spouse will suffer financial hardship were the applicant removed. As the applicant's spouse states, "...If my wife has to stay in Mexico, who will help me care for them? I would have to work and also worry about them by myself...It would affect me economically because I would have to pay double having my family here and my wife in Mexico and having to sustain her over there...*Letter and translation from* [REDACTED]

The applicant does not explain why the applicant's adult daughter would be unable to assist the applicant's spouse should the applicant's spouse need such support. Moreover, no evidence has been provided to substantiate that the applicant is unable to obtain gainful employment in Mexico, thereby providing her with the ability to assist her spouse with respect to household costs while he remains in the United States. Finally, the applicant has failed to explain why the applicant's spouse would be unable to visit the applicant on a regular basis, due to the close proximity between Mexico and Arizona.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. 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 (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 removed.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse states that if he relocated to Mexico with the applicant, "...I would have to look for a way to borrow the money to pay the bills that she [the applicant] will have over there with the doctor. We do not have family in Mexico and if she is denied the right to live here and if I accompany her, we would lose our house that I am paying here, the car I am buying and I am going to lose my job here. We would have to begin a new life with nothing—look for a place to live, look for work here in Mexico and barely have enough for my daughters to eat because I am not going to earn enough... *Id.* at 1.

No corroborating evidence has been provided to establish that the applicant's spouse and/or the applicant, both nationals of Mexico, would be unable to obtain gainful employment with adequate medical care coverage in Mexico. In addition, the applicant has failed to document that the applicant's youngest child's learning disabilities would worsen in Mexico to an extent that would cause extreme hardship to the applicant's spouse. Finally, although [REDACTED], in her evaluation, states that the applicant's minor children are limited speakers and writers of Spanish, and are non-Spanish readers and thus, they will encounter difficulty with respect to their academics in Mexico, it has not been documented that the applicant's children would be unable to enroll in an English-speaking institution and moreover, it has not

been demonstrated that the problems referenced by [REDACTED] would cause the applicant's spouse, the only qualifying relative in this case, extreme hardship.

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 will face extreme hardship if the applicant is removed from the United States. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Although CIS is not insensitive to his situation, the financial strain and emotional hardship he would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.