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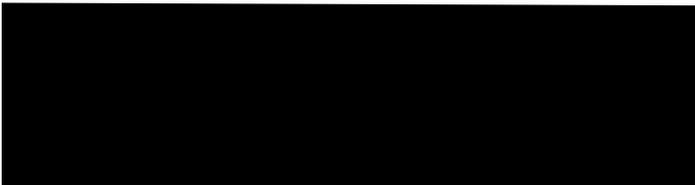
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
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U.S. Citizenship
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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: JUN 03 2008

IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 is the spouse of a United States citizen and 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 return to the United States and rejoin her husband and children.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to remain in Mexico. The entire record was reviewed and considered in rendering 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.

Regarding the applicant's grounds of inadmissibility, the OIC found that she entered the United States, without inspection, in 1997, and did not depart until February 2005. The applicant is now seeking admission within ten years of her February 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. The applicant does not contest the director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

The record contains several references to the hardship that the applicant's United States citizen children will suffer if the applicant is refused admission into the United States. However, 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. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship that the applicant or the couple's children will face cannot be considered, except as it may affect the applicant's husband.

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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 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).

The applicant's husband is a thirty-seven-year-old citizen of the United States. He has been a citizen of the United States since August 30, 1996. He and the applicant have been married since June 20, 1996 and have two children, both of whom are United States citizens.

In his April 4, 2005 letter, the applicant's husband states that the couple's children are very attached to their mother; that they are economically stable; and that it would be very difficult to take care of the children alone.

In his September 1, 2005 letter, the applicant's husband states that separation from the applicant has been hard on the couple's children; that both children are very attached to their mother; that their son has a speech impediment; that his job requires more than 40 hours of work per week, and that he is busiest on the weekends; and that separation from the applicant is causing financial strain on the family.

In his appellate brief, the applicant's husband states that the hardships endured by the family as a result of the applicant's inadmissibility go beyond the normal problems associated separation.

The record also contains a letter from a speech language pathologist confirming that the couple's son receives speech therapy for 60 minutes per week.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "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."); *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).

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether he joins her in Mexico or remains in the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 husband will face extreme hardship if the applicant is refused admission. The record does not demonstrate that he faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. The hardships enumerated by the applicant's husband—separation from his wife, his son's speech impairment; his long working hours; the children's separation from their mother; and his need to secure childcare, as the applicant is the childcare provider—are not unique to the applicant's husband's case. Rather, they are faced by most people facing the deportation of a spouse. While the AAO notes the son's speech impairment, the applicant has not explained how their son's diagnosis impacts her husband. She has not established that, without her presence in the United States, their son's diagnosis would cause extreme hardship to her husband. Finally, the AAO notes the presence of

an extended family network in the United States, and the applicant has not explained why these family members would not be able to assist her husband in caring for the children.¹

Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Mexico, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law.

Nor has the applicant established that her husband would face extreme hardship if he joined her in Mexico: again, the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. No evidence was submitted, or claims made, to establish that he would experience financial or emotional hardship that would rise to the level of “extreme” as contemplated by statute and case law in such a situation.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation 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 INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

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

¹ While the AAO is not permitted to consider whether denial of the waiver would result in extreme hardship to the applicant’s children, it does note that, as citizens of the United States, they would not be required to relocate to Mexico upon denial of the waiver application.