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FILE:  Office: CIUDAD JUAREZ, MX Date: NOV 17 2008

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.

Michael Shumway
for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the District Director, Ciudad Juarez, Mexico on April 28, 2006. The matter was appealed to the Administrative Appeals Office (AAO). The appeal was rejected by the AAO as untimely filed on October 2, 2007, and the matter was returned to the district director for consideration as a motion to reopen. The AAO now moves to reopen the matter *sua sponte* based on the submission of evidence that the appeal was timely filed. The October 2, 2007 AAO decision will be withdrawn. The appeal will be dismissed, and the Form I-601 will be denied.

The applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that the evidence establishes her husband will suffer extreme hardship if the Form I-601 is denied.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny alien (other than an alien lawfully admitted for permanent residence) who –

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- (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.

The Board of Immigration Appeals (Board) clarified in its decision, *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006), that a:

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . .”

The record reflects that the applicant was denied admission into the United States on May 1, 2002, after she admitted to immigration officials that she had lived unlawfully in the United States for over a year. The applicant signed a Withdrawal of Application for Admission/Consular Notification form reflecting her admission to immigration officers that she was “in route to the home she maintains with her husband at [REDACTED] in El Paso, Texas.” The applicant additionally indicated that she had lived at the home in El Paso, Texas for over a year. Based on her admissions, the applicant was determined to be inadmissible, and she was allowed to withdraw her application for admission, in lieu of formal expedited removal proceedings. The applicant has remained outside of the United States since May 1, 2002.

On appeal, the applicant submits May 2006 affidavits from herself, her mother, and her mother-in-law, indicating that she lived with her husband in Mexico after their marriage in 2000, and that she has never lived in the United States. The applicant indicates that she was forced to sign the Withdrawal of Application for Admission/Consular Notification form out of fear that U.S. immigration officials would take her infant U.S. citizen son from her if she did not sign.

It is noted that the record contains no evidence to indicate that the applicant challenged the grounds upon which she was denied admission into the United States in May 2002. The AAO notes further that its appellate jurisdiction is limited, and that it has no jurisdiction over the applicant's claim that she was wrongfully denied admission into the United States in May 2002. Furthermore, the evidence shows that the applicant was issued her border crossing card in April 2000, was married on November 17, 2000 in the United States, and gave birth to her child on June 17, 2001 in the United States, all of which suggest that the applicant was residing in the United States prior to May 1, 2002.

The evidence contained in the record reflects that the applicant was unlawfully present in the United States for more than one year prior to May 1, 2002. Accordingly, the applicant is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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.

In the present matter, the applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes. U.S. citizen and lawful permanent resident children are not qualifying relatives for section 212(a)(9)(B)(v) of the Act waiver of inadmissibility purposes. Hardship claims made with regard to the applicant's U.S. citizen child may therefore only be considered to the extent that they relate to extreme hardship suffered by the applicant's husband ().

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

“Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant asserts that the denial of her Form I-601 will cause extreme emotional hardship to her husband. The record contains the following evidence relating to the applicant’s claim:

An April 2005 letter written by [REDACTED] stating that he is suffering emotionally because his wife and son cannot live with him in Texas, and stating that he wants his son to be able to attend school in the U.S., but that he needs his wife to help raise his son and to help with his son’s education.

A May 2006 letter written by [REDACTED] stating that he wants to start life in the U.S. with his wife and son, and that it is difficult to live apart from his family. He states that his son will receive a better education in the U.S., and that he wants his son to be educated in the U.S. Mr. [REDACTED] states further that he himself is a full-time student, but that it is difficult to concentrate on school, and he feels his grades would go up if his wife and son lived in the U.S. with him.

A Fall 2006 approval for [REDACTED] reinstatement at the University of Texas, El Paso, College of Business Administration, and [REDACTED] Fall 2005 university transcript reflecting predominantly non-completed classes and “C” and “D” grades in the classes completed.

A birth certificate reflecting that [REDACTED] son was born in El Paso, Texas on June 17, 2001.

The record also contains three May 2006 letters from the applicant, her mother and her mother-in-law addressing the applicant’s claim that she did not live unlawfully in the United States. The letters do not address hardship that [REDACTED] would face if the applicant were denied admission into the United States. In addition, the record contains two untranslated Spanish language letters written by the applicant and her husband. The regulation at 8 C.F.R. § 103.2(b)(3) provides that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

Because the untranslated documents fail to comply with the requirements set forth in 8 C.F.R. § 103.2(b)(3), they serve no evidentiary purpose.

The AAO finds, upon review of all of the evidence, that the applicant has failed to establish that her husband would suffer extreme hardship if the applicant is denied admission into the United States and [REDACTED] either remains in the U.S., or moves to Mexico to live with the applicant and their son.

The school transcript evidence contained in the record fails to demonstrate that [REDACTED] incomplete and low grades are caused by his separation from his family, and the evidence fails to indicate or establish

that _____ grades would improve if the applicant lived in the United States. The affidavit evidence contained in the record additionally fails to establish that _____ would suffer hardship beyond that normally experienced upon removal of a family member, if the applicant is denied admission into the United States.

The applicant does not claim that her husband would experience extreme hardship if he moved to Mexico to live with the applicant and their son, and the record contains no evidence addressing the issue. The applicant therefore also failed to establish that her husband would suffer hardship beyond that normally experienced upon removal of a family member, if he moved to Mexico to be with his family.

A section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. In the present matter, the applicant failed to establish that her husband would suffer extreme hardship in Mexico or in the United States if she were denied admission into the United States. The AAO therefore finds it unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form I-601 will be denied.

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