

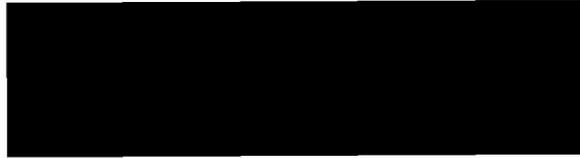
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U.S. Citizenship
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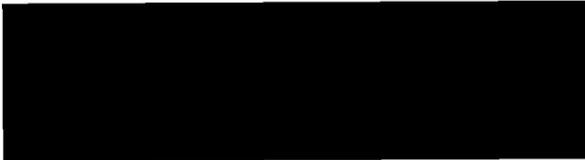
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FILE: [REDACTED] Office: HARLINGEN, TEXAS Date: OCT 29 2008

IN RE: [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 PETITIONER:



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 waiver application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who first entered the United States without inspection in 1989. She departed the United States in 1999 and reentered with an advance parole document and has remained in the country since that date. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She 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 remain in the United States with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated April 12, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) erred in determining that the applicant’s husband would not suffer extreme harm as a result of being separated from the applicant. Counsel states that the Board of Immigration Appeals (BIA) decisions relied on by CIS to reach the conclusion that spousal separation does not constitute extreme hardship do not in fact support this conclusion. *See Form I-290B, Notice of Appeal to the AAO*. Counsel further asserts that CIS erred in failing to consider a 1997 memorandum stating that a parole document should not be issued to an individual facing a bar to admissibility for unlawful presence unless the district director intends to grant a waiver of inadmissibility. *See Form I-290B, Notice of Appeal to the AAO*. In support of the waiver application and appeal, counsel submitted an affidavit from the applicant’s husband and copies of legal memoranda concerning the issuance of advance parole documents and the exercise of discretion. 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:

- (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 Secretary, 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.

Counsel asserts that CIS erred by failing to mention in its decision a 1997 memorandum concerning advance parole for aliens unlawfully present in the United States, and in doing so violated a May 2006 memorandum from the Acting CIS Deputy Director. *Counsel's Brief in Support of Appeal* at 5. Counsel asserts that the issuance of a parole document to the applicant constituted a government error. He further states that in such cases, the 2006 memorandum states that an exercise of discretion "resulting in an extraordinary favorable outcome to the applicant" may be justified. *Brief* at 5 (quoting Robert C. Divine, Acting CIS Deputy Director, *Interoffice Memorandum: Legal and Discretionary Analysis for Adjudication*, May 3, 2006). The AAO notes, however, that although a waiver under section 212(a)(9)(B)(v) of the Act is discretionary, the applicant must first demonstrate statutory eligibility for this relief by showing extreme hardship to a qualifying relative before the discretionary factors can be addressed. 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 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a thirty-one year-old native and citizen of Mexico who has resided in the United States since she entered without inspection in 1989. The applicant married her husband, a twenty-nine year-old native and citizen of the United States, on November 11, 2004. They reside together in San Benito, Texas. In 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 22, 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently traveled to Mexico and used the advance parole authorization to reenter the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of authorized stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate*

Commissioner, Office of Field Operations dated June 12, 2002. The applicant accrued unlawful presence from April 1, 1997, the date section 212(a)(9)(B)(i) of the Act entered into effect, until she departed the United States in 1999. Pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant is barred from again seeking admission within ten years of the date of her departure from the United States in 1999.

Counsel asserts that the applicant's husband would suffer extreme hardship as a result of being separated from the applicant and further states, "to say that a United States citizen would not suffer extreme hardship because his alien wife will [sic] can't live with him is not supported by the case law." *Brief* at 4-5. The applicant's husband states in his affidavit that meeting and marrying the applicant "has to be the most wonderful thing that has happened to me after my divorce." *Affidavit of* [REDACTED] dated March 14, 2006. He further states,

My wife is an essential part of my life. I would suffer greatly if my wife was not permitted to remain in the United States. I love my wife very much and I cannot imagine living my whole life separated. I do not know how to measure **nor even how to express the extreme hardship** . . . if my wife cannot stay with me. *Affidavit of* [REDACTED]

Counsel states that the applicant's husband would suffer emotional hardship as a result of separation from the applicant. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his concern over the prospect of separation from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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 exists.

The emotional and financial hardship the applicant's husband is experiencing appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). The applicant made no claim that her husband would experience hardship if he were to relocate with her to Mexico. Therefore, the AAO cannot make a determination of whether he would suffer extreme hardship if he moved to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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.