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**U.S. Citizenship
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ)
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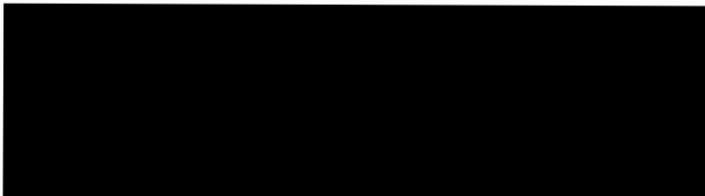
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision ~~at~~ the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter 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 wife of a U.S. citizen, the mother of a U.S. citizen child, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and child.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, counsel provided additional evidence. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

On a Form DS-230 in the record, the applicant stated that, after entering without inspection, she lived in La Habra, California from June 1994 until July 7, 2005.

On the Form I-130, the applicant's husband, who signed that form on August 26, 2003, stated that the last time the applicant entered the United States was without inspection.

On the Form I-601, Application for Waiver of Inadmissibility, the applicant, who signed that form on July 11, 2005, stated that she entered the United States without inspection and lived in La Habra, California from June 1994 to July 2005. The applicant submitted that application to USCIS in Ciudad Juarez on July 12, 2005, indicating that she had departed the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until July 2005, a period of more than one year. The AAO finds, therefore, that, pursuant to section 212(a)(9)(B)(i) of the Act, the applicant is inadmissible for ten years after the date she left the United States during July 2005, which ten-year period has not yet ended. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and whether it should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of 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).

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).

The record contains numerous declarations from family members, friends, former coworkers, former employers, and acquaintances. Some of those declarations are in Spanish and are not accompanied by an English translation. 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. 8 C.F.R. 103.2(b)(3). Those declarations submitted without the required translation shall not be considered.

Most of the remaining declarations are merely character references, attesting to the character and industry of the applicant and her husband. The character and industry of the applicant and her husband are not directly relevant to any hardship that might be occasioned to the applicant's husband by failure to grant the waiver application. Those declarations will not be further addressed.

One letter, dated July 19, 2006, is from [REDACTED] Mr. [REDACTED] stated,

Since [the applicant] and her family have been separated [the applicant's husband] and his children appear to be very depressed and their children have been struggling at school. In addition their nutrition and health have been affected. This is true for [the applicant's husband] as well, I have noticed that he has lost a lot of weight and he has been very distant.

I believe [the applicant] needs to be at home to take care of her family and to meet their nutritional needs and education.

[Errors in the original.]

The record contains a letter, dated January 14, 2006, from the applicant's husband. He stated that he and the applicant love each other very much, and that he and his family miss her. He also noted practical assistance she provided in the household, cooking, cleaning, and watching the children.

A letter, dated July 11, 2006, from [REDACTED], a friend and former employer of the applicant, states that if the waiver application is not approved, the applicant's family will suffer because the applicant will be away from her son.

A letter, dated July 11, 2006, from the applicant's sister, states that like every other person the applicant hates to be separated from her home and her family, and that the applicant is suffering by being away from her children. She further stated that the applicant's husband and children miss her very much.

A letter, dated July 12, 2006, from [REDACTED], the applicant's niece, states that the applicant's young children need the applicant's special attention and need her to be in the United States with them. [REDACTED] added that the family will not be happy without the applicant.

A letter, dated July 21, 2006, states that since the applicant left the United States her children have had school performance problems, her husband looks distracted all the time, and the nutrition of the husband and children seems to have suffered.

A Meeting Summary, dated March 6, 2006, from the North Orange County school system indicates that [REDACTED], the applicant's son, had returned to the United States from Mexico the previous month, and that the goal set was for him to receive a C average, which goal he had attained. It further stated that, although he reads below grade-level, he had attained his reading goal, was doing well in Mathematics, and had good writing skills.

Pay statements, Form 1099 Miscellaneous Income statements, and Form W-2 Wage and Tax Statements in the record demonstrate that the applicant was working and earning income in the United States. Although the applicant and counsel made no argument pertinent to financial hardship occasioned by the applicant's absence from the United States, any substantial loss of income is a hardship, although the record does not demonstrate the extent of that hardship to the applicant's husband.

The record contains a letter, dated July 21, 2006, from [REDACTED], a psychologist. Dr. [REDACTED] who stated that the applicant's husband presented on June 30, 2006 with depression related to his family being separated, was seen two additional times, and was scheduled for a fourth appointment. The psychologist reported that the applicant's husband reported feeling especially distressed about the impact on his children of the family being separated. She diagnosed the applicant's husband with Depressive Disorder.

The record contains an undated letter from the applicant's husband, who stated that his stepchildren, the applicant's children, are in the United States with him and [REDACTED] the child he and the applicant had, is in Mexico with her. He further stated that the applicant's 18-year old daughter is pregnant and her 14-year old son was having trouble in school, has been diagnosed with a learning disability, and has moved to live with his great aunt in Reno, Nevada. The applicant's husband stated that he has insomnia, and when he does sleep, has nightmares. He expressed inability to handle his family responsibilities without the assistance of his wife.

On appeal, counsel submitted no argument pertinent to the applicant's husband's hardship.

Although the input of any mental health professional is respected and valuable, [REDACTED] assessment of the applicant's husband is based on only three appointments within less than three weeks. The extent to which her diagnosis of the applicant's husband was influenced by the applicant's husband's own self-reporting is unclear, as is whether the applicant's husband and the psychologist have an established ongoing relationship or met solely to produce a letter to be used as evidence in this proceeding. This diminishes the report's value in determining extreme hardship.

The evidence indicates that the applicant's husband is suffering from some degree of depression, including insomnia and loss of appetite. The evidence indicates that the applicant's husband misses her, both on a personal level and for her practical assistance in the household. The evidence indicates that the family has lost some income as a result of the applicant leaving the United States. The evidence does not address whether the applicant's husband could feasibly relocate to Mexico, thus assuaging the hardship he faces by living apart from his wife.

However, 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 faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The applicant's sister noted, in her July 11, 2006 letter, that people typically miss their families when they are separated. The point made in this and prior decisions on this matter is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

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), *Perez v. INS*, 96 F.3d 390 (9th 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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.