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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: EL PASO, TEXAS
(CDJ 2004 530 245 relates)

Date: APR 14 2009

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:

[REDACTED]

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 that 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 waiver application was denied by the District Director, El Paso, Texas, 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 who 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 and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with her United States citizen husband and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 26, 2006.

On appeal, the applicant, through counsel, asserts that the applicant's husband and children are suffering extreme hardship. *See appeal brief*, undated.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, and letters from [REDACTED] and [REDACTED] regarding the applicant's daughter's medical condition. 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:

(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 [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 AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that the applicant initially entered the United States in 1997 without inspection. On an unknown date, the applicant departed the United States. On April 17, 1998, the applicant's husband filed a Form I-130 on behalf of the applicant. On an unknown date in 1998, the applicant reentered the United States without inspection.¹ On an unknown date in 2003, the applicant departed the United States. On January 5, 2004, the applicant's Form I-130 was approved. On an unknown date in 2004, the applicant reentered the United States without inspection.² On an unknown date after July 15, 2005³, the applicant departed the United States. On July 20, 2005, the applicant filed a Form I-601. On June 26, 2006, the District Director denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from at least April 25, 1998, the date the applicant's daughter was born in Texas, until 2003, the year the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her 2003 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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

¹ The AAO notes that applicant's daughter was born on April 25, 1998 in Texas.

² The AAO notes that the applicant submitted a Form W-2 Wage and Tax Statement establishing that the applicant was employed in the United States in 2004.

³ The AAO notes that the applicant's son was born on July 15, 2005 in Texas.

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.

Counsel states that the applicant's husband and children are suffering extreme hardship. *See appeal brief, supra*. Counsel claims that the applicant's husband is suffering "depression due to the trauma of the separation from [the applicant]." *Id* at 5. The AAO notes that other than counsel's statement regarding the applicant's husband's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. The applicant's husband states he has been working at his current job for many years. *See affidavit from [REDACTED]*, dated July 24, 2006. The AAO notes that the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job in Mexico. Counsel states that the applicant's husband has "lived all of his life in Texas but has come to realize that he will have no choice but to be forced to accompany the [applicant] to Mexico if this waiver is not granted." *Appeal brief, supra* at 5-6. The AAO notes that the applicant's husband is a native of Mexico, he speaks Spanish, and it has not been established that he has no family ties in Mexico. [REDACTED] and [REDACTED] diagnosed the applicant's daughter with systolic heart murmur, mild to moderate aortic stenosis, and a left ventricular hypertrophy. *See letter from [REDACTED]*, dated June 29, 2006; *see also letter from [REDACTED]*, dated June 30, 2006. [REDACTED] states the applicant's daughter needs to be seen in their office once a month; however, the AAO notes that there was no documentation submitted that the applicant's daughter could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive her medical treatments. Additionally, the AAO notes that the applicant's daughter is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, with access to education for his children and maintaining his employment. The applicant's husband states if he joins the applicant in Mexico, he will lose his health insurance and employment. *See affidavit from [REDACTED]*, *supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims that when the applicant resided in the United States she "contributed financial support of the family." *Appeal Brief, supra*. The AAO notes that it has not been established that the applicant is unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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