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U.S. Citizenship
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FILE:

Office: PHOENIX, ARIZONA

Date:

JAN - 2 2009

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. section 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.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She 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 one year or more. 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 lawful permanent resident spouse, [REDACTED] and their five U.S. citizen children.

In a decision dated August 18 2006, the director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant contends that she should not have been subjected to 212(a)(9)(B)(i)(II) of the Act since both her initial entry into the United States and her subsequent entry based on Form I-512, Authorization for Advance Parole, were legal. The applicant further asserted that the director was incorrect in denying the application for waiver since the applicant in fact did prove extreme hardship to her spouse as required by the statute. The applicant did not submit additional evidence on appeal.

The entire record was reviewed and considered in rendering this decision.

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 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.

On appeal, the applicant objects to the director's finding regarding her inadmissibility, contending that both her initial entry and her last entry into the United States were legal. The record reflects that the applicant entered the United States as a tourist in May 1996. Thereafter, however, she remained in the United States out of status from 1996 until September 2003, when she was granted non-immigrant V-1 status until September 2005. Thus, the applicant had accrued unlawful presence from April 1, 1997, the date of the implementation of the unlawful presence provisions under the Act, until September 2003.

The record further shows that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on June 21, 2005. In August 2005, the applicant was issued an Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States.¹ The proper filing of an affirmative application for adjustment of status has been designated by the Secretary as an authorized period of 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.* In applying to adjust her status to that of lawful permanent resident, the applicant is seeking admission within 10 years of her departure from the United States. As she had resided unlawfully in the United States for over a year and is now seeking admission within 10 years of her last departure from the United States, the director correctly found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 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 list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying

¹ It is noted that on the Form I-512, the applicant was given the following notice:

If after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(c)(9)(B)(i) of the Act when you return to the United States to resume then processing of your application. IF you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

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.

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On the Form I-601 filed on June 19, 2006, the applicant listed as a qualifying relative her U.S. lawful permanent resident spouse. The record also shows that the applicant and her spouse have five U.S. citizen children, and both of the applicant's parents are lawful permanent residents of the United States. The applicant submitted copies of the permanent resident and social security cards of her spouse and parents, copies of the U.S. issued birth certificates or registration cards for her five children, and a letter dated June 12, 2006 from her spouse describing the hardship that he, his parents-in-law and his children would suffer in the event of the applicant's departure from the United States. In the letter, the applicant's spouse stated that his wife's parents are elderly, and the applicant has "full moral responsibility" for them since she is their only child. While he did not elaborate upon their state of health, the applicant's spouse stated that the reason the applicant had to go to Mexico in August 2005 was because her mother was "greatly ill" and was receiving treatment in a hospital in Mexico. The applicant's spouse also stated that he works as a migrant field laborer and is the sole wage earner in his family. He indicated that should his wife have to depart from the United States, their children would have to accompany her because he would not be able to properly care for them

given the nature of his work. As such, he stated, the applicant's departure would greatly affect their financial situation, disrupt the children's education, and cause the break up of his family.

In denying the application, the director found that the applicant has failed to show that extreme hardship exists for a qualifying relative. Specifically, the director observed that the record lacks documentation to support [REDACTED]' claim that the applicant is the only person who could provide care for her parents, nor is there any evidence regarding her mother's illness that necessitated the applicant's trip out the United States. The director also noted that the financial hardship described by the applicant's spouse does not rise to the level of extreme hardship. In addition, the director found, there is no evidence supporting [REDACTED]' claim that their children would suffer academically as the result of the applicant's departure from the United States. Further, the director noted that there is no requirement that the applicant's spouse or children must accompany her abroad, nor has the applicant established that they would suffer extreme hardship abroad.

On appeal, the applicant states that she disagrees with the director's decision. She asserts that her enforced departure would "create all types of hardship to [her spouse], it would be impossible to leave out the hardship created to her U.S. citizen children." The applicant also maintains that requiring her to depart the United States would amount to "a *de facto* deportation of a legal resident alien and three U.S. citizen born children."

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 qualifying relative, her spouse, faces extreme hardship due to the applicant's inadmissibility.²

In his letter, the applicant's spouse stated that the departure of his wife "would cause a great deal of problems possibly even the break up of [his] family." Likewise, the applicant asserted on appeal that her husband would suffer "all types of hardship." The AAO recognizes that the applicant's spouse would experience considerable hardship should his wife be required to depart from the United States. However, beyond these general assertions, the applicant has not provided sufficient details of the nature or extent of the hardship her husband would suffer, nor is there documentary evidence to support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As it stands, the record does not demonstrate how [REDACTED] situation, if he remains in the United States, would surpass the circumstances typical to individuals separated as a result of deportation or exclusion and rise to the level of "extreme hardship."

² It is noted that the applicant's spouse asserted that the applicant's parents are U.S. lawful permanent residents. However, according to Form G-325, Biographic Information, submitted with the applicant's Form I-485 in June 2005, both of the applicant's parents reside in Mexico at that time, and there is no evidence in the record that they have since relocated to the United States. Further, based on the applicant's Form I-601 and supporting documentation, the applicant does not claim eligibility for this waiver through her parents.

The applicant asserted on appeal that finding her inadmissible is tantamount to a *de facto* deportation of her husband and U.S. citizen children. As noted above, there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request. However, to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Mexico. Based on the record, the applicant's spouse does not appear to consider moving to Mexico with the applicant to avoid the hardship of separation a viable solution. In his letter, [REDACTED] indicated that his financial situation would be affected because labor in Mexico does not pay as much as in the United States. However, without some documentary evidence of the lack of employment opportunities or lower pay in Mexico, his statements are of little evidentiary value. Moreover, economic detriment, including the loss of employment and the inability to maintain a standard of living or to pursue a chosen profession, is not uncommon when individuals relocate outside the United States to join family members and, therefore, does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996).

The AAO notes that both the applicant and her husband refer to hardship to their U.S. citizen children. In his letter, the applicant's spouse stated that because of his work, he would be unable to care for the children and most likely they would have to relocate to Mexico with their mother. He further speculated that "they would face many barriers education and work wise in Mexico." The AAO recognizes that the applicant's minor children would suffer considerable hardship should their mother. However, as previously noted, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under 212(a)(9)(B)(v) of the Act. Further, the evidence of record is not sufficient to demonstrate that hardship to the children would result in extreme hardship to the applicant's spouse, as required in connection with this waiver.

The AAO recognizes that the applicant's spouse will suffer as a result of the applicant's departure from the United States. However, the record does not demonstrate that his hardship would be greater than that typical of individuals separated as a result of removal or inadmissibility, such that it would rise to the level of "extreme hardship." U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (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). 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. "[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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's 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 failed to establish extreme hardship to her U.S. legal permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. 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)(v) of the Act, the burden of proving eligibility rests 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.