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U.S. Citizenship
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Services

H3

FILE:

Office: PHOENIX

Date: JUL 28 2009

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: 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, 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 spouse of a U.S. citizen, the mother of a U.S. citizen child and two Legal Permanent Resident (LPR) children, 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 reside in the United States with her husband and children.

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 her U.S. citizen spouse and denied the application.

On appeal, the applicant reiterated that failure to approve the waiver application would cause extreme hardship to her husband. She also provided additional evidence. Although the applicant 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 an Application to Adjust Status (Form I-485) that the applicant signed on August 7, 2000, she indicated that she had last entered the United States at Nogales, Arizona, entering without inspection. On a G-325A, Biographic Information form that she also signed on August 7, 2000, the applicant stated that she last lived in Mexico during 1994, and had lived in Arizona from 1994 through the date of that form.

In an undated statement, the applicant claimed that she left Phoenix, Arizona on March 16, 2001, to visit relatives in Mexico, then, on her return, presented herself for inspection at San Luis, Arizona, on March 20, 2001. Inspection was deferred to Phoenix, and she was paroled in until April 3, 2001.

The record contains an Order to Appear for Deferred Inspection (Form I-546) completed by an officer of USCIS on March 20, 2001, at the San Luis, Arizona Port of Entry. On it, the officer indicated that the applicant stated that she had gone to Mexico to visit relatives in San Luis, Sonora, whom she had not seen in about five years. San Luis, Sonora is immediately across the Mexican border from San Luis, Arizona.

The evidence in the record is sufficient to show that the applicant entered the United States without inspection sometime during 1994. On November 24, 2000, she filed a Form I-485, thus terminating her unlawful presence. See Memo. from Donald Neufeld, Acting Assoc. Dir., Domestic Ops. Directorate, US Citizenship and Immigration Services, US Dept. Homeland Sec., to Field Leadership, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009) at (b)(3)(A).

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. It continued until November 24, 2000, and encompassed more than one year. The AAO finds, therefore, that the applicant is inadmissible, on that basis, for ten years after November 24, 2000, the date she left the United States, which period has not yet ended. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and, if so, 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 children is not directly 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-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 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 a sworn statement, dated January 31, 2005 and notarized on February 9, 2006, from the applicant. In that letter, the applicant addressed hardship that would result to her and her children if waiver is not granted in this case, but did not directly address hardship to the applicant's husband.

In assessing the hardship that would result if she returned to Mexico to live, the applicant stated, "I have no relatives in Mexico . . ." The AAO notes that when she presented herself for inspection at San Luis, Arizona on March 20, 2001 she stated that she had gone to San Luis, Sonora to visit relatives. Further, in her undated statement, described above, the applicant stated that she had gone to San Luis, Sonora to visit some relatives.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record contains numerous character references from friends and acquaintances of the applicant. Those references do not address hardship that would result to the applicant's husband if the waiver application is denied. As such, they are not directly relevant to whether denial of the waiver application would cause the applicant's husband extreme hardship.

The record contains a statement, dated February 8, 2006, from four of the applicant's children. They stated that their father will suffer if the applicant is removed to Mexico and keeping the household together would be difficult for him, but did not provide any detail to clarify those abstract statements.

The record contains a sworn statement, dated February 11, 2006, from the applicant's husband. He stated that he works from five in the morning until two in the afternoon, and would be unable to continue to work that shift and care for his children. He stated that, as a result, he would probably lose his job. He stated that he would be devastated from the pain.

He further stated that his children have lived most of their lives in the United States and are acculturated. He stated that for them to move to Mexico would greatly change the family's educational opportunities, emotional stability, and its financial progress, as finding good employment would be difficult for him.

On appeal, the applicant stated that she has a close and loving family that should be kept together, but that failure to approve the waiver application would destroy that family. It further states that failure to approve the waiver application would change the applicant's children's lives drastically, that the stability of her marriage is suffering, and that family and relatives are devastated, without providing any detail pertinent to those abstract claims. The applicant further stated that her husband's health has deteriorated, and that he has gone from being healthy and optimistic to being grouchy, impatient, and insecure.

Subsequently, the applicant submitted a Behavioral Health Service Plan from Terros, Incorporated. It is signed by [REDACTED] whose job title and qualifications are otherwise unstated. That service plan, which is dated September 29, 2006, indicated that the applicant's husband stated that he had taken his wife to Mexico not knowing that it would affect her legal status, and that he now lacks energy and feels guilty, worried, and sad. The plan indicated that the applicant's husband further

stated that he wanted medication to help him deal with his symptoms and wanted to learn to deal better with his anxiety and depression. The plan recommends that the applicant's husband receive medication, attend group therapy, and be evaluated in a year to determine whether he had met his goals. The record contains no indication that the applicant's husband was prescribed any medication or that he ever began the recommended therapy.

The March 20, 2001 Form I-546 in the record indicates that the applicant presented herself and three of her children, all Mexican citizens, for inspection at the San Luis, Arizona port of entry from Mexico. The applicant presented advance parole documents for the three children, but not for herself. The USCIS officer who completed that form stated, "[W]e were instructed [by the Phoenix District Office] to parole [the applicant] into the United States because of her three minor children [whom she was accompanying]." That the applicant was permitted to enter the United States for the express purpose of accompanying her three minor children to their home in Phoenix suggests that, contrary to the indication in the treatment plan, her husband was not with them.

The record contains an employment verification letter, dated December 19, 2005, from Sanitors, Inc. That letter states that the applicant had then worked for Sanitors since May 7, 2004, and that she worked a 40-hour week. It does not indicate what her rate of pay was.

The record contains a letter, dated December 15, 2005, from [REDACTED], who gave her job title as Project Manager. [REDACTED] stated that the applicant had then worked for her since **September 2004**. The company that employs [REDACTED] and the applicant is not identified. Whether that employment is identical to the employment described in the December 19, 2005 letter from Sanitors is unclear. The number of hours the applicant works for [REDACTED] and the applicant's pay scale are unstated.

Although the applicant did not argue that failure to approve the waiver application will cause her husband financial hardship, the AAO recognizes that virtually any loss of income represents some degree of hardship. The evidence in the record is insufficient, however, to demonstrate that the loss of the applicant's income would cause hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The psychological evidence in the record is unconvincing. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single self-reporting interview between the applicant's husband and [REDACTED]. The record fails to reflect an ongoing relationship with the applicant's husband or any history of treatment, other than an initial recommendation, for the symptoms allegedly suffered by the applicant's husband. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship **with a psychologist, or whatever sort of health professional [REDACTED] might be**, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship. The psychological evidence submitted is insufficient to show that, if the waiver application is not approved, the applicant's husband will suffer emotional or psychological hardship

which, when combined with the other hardship factors in this case, rises to the level of extreme hardship.

The applicant asserted, on appeal, that her husband's health has deteriorated since he learned that she might be deported. However, the applicant provided no other evidence pertinent to her husband's physical health. Although the statements by the applicant are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The applicant's statement is insufficient to demonstrate that, if the waiver application is not approved, the applicant's husband will suffer a decline in health which, when considered together with the other hardship factors in this case, will constitute extreme hardship.

The applicant's husband stated that he would suffer hardship in the absence of his wife because he would be unable to care for his children adequately. On her Form I-485, which she signed on August 7, 2000, the applicant stated that she then had six children. The youngest was born on September 27, 1998 and would, of course, require considerable care, whether in the United States or in Mexico. The remaining children, however, were born between 1989 and 1976. They would, therefore, now range from roughly 20 to roughly 36 years old.

The applicant did not state which of those children now live at the same address with her, her husband, and her youngest child. However, that the applicant claims, at times, to have no relatives in Mexico suggests that the majority of her children may live in the United States. Not only would the five who are over 20 years old likely be mature enough to care for themselves, but some of them might be of some assistance, if the applicant's husband requires it, in caring for their youngest sibling. The applicant's husband failed to address this possibility in assessing the hardship the applicant's absence would cause. Although the loss of her child caring assistance would necessarily engender some hardship to her husband, the applicant has not demonstrated that this loss would, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

Further, if the applicant is removed to Mexico, and settles in San Luis, Sonora, where she claims, at times, to have relatives, she would be located only a few hundred miles from her husband's home in Phoenix, Arizona. That proximity would likely enable the applicant's husband and any other family members who remain in the United States to visit her more often than a typical spouse of a removed alien is able. That aspect of the hardship caused to the applicant's husband would be less in the instant case than in a typical case.

Another possibility, if the applicant is removed to Mexico, is that her family, or some portion of it, might join her and live there. The applicant's husband stated that this would be impossible because his children have spent most of their lives in the United States, have acquired the culture of the United States, and he would have a difficult time acquiring suitable employment in Mexico. He

further stated, "The change will be dramatic in terms of educational, emotional stability, and financial progress."

That the applicant's children would be obliged, if they moved to Mexico, to adapt to another culture does not, in itself, establish that their father would suffer any hardship. People often move to foreign countries with differing cultures without causing hardship to their parents.

This office accepts, even without evidence, that the applicant's youngest child, born during 1998, is likely attending school. The applicant has provided no evidence, however, to demonstrate that her older children, born from 1976 to 1989 are also continuing their education. As such, the applicant has not demonstrated that any curtailed educational opportunities would inconvenience them or cause hardship to their father. Even as to the youngest child, no evidence was submitted to demonstrate that, if she receives a Mexican education rather than being educated in the United States, this will cause hardship to her father that, when combined with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's husband did not further explain how moving to Mexico would adversely affect his family's "emotional stability."

As to the applicant's husband's claim that finding employment in Mexico would be difficult, the record contains no indication that the difficulty would cause him hardship that, when combined with the other hardship factors in this matter, would rise to the level of extreme hardship. Further, the inability to maintain one's present standard of living does not necessarily constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

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 point made in this and prior decisions on this matter, however, 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.