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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, ILLINOIS

Date: DEC 17 2008

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. § 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States without inspection in May 1993, when she was ten years old. She remained in the United States until July 28, 2004, when she briefly traveled to Canada and was then paroled into the United States. 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 remain in the United States with her spouse.

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Interim District Director*, dated January 12, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in determining that the applicant's husband would not suffer extreme hardship if the applicant is removed from the United States. Specifically, counsel states that the applicant's husband would suffer emotional hardship due to being separated from the applicant, and this would put his safety at risk because he works as a police officer and cannot afford to be distracted while at work. *See Brief in Support of Appeal* at 2. Counsel further states that due to the dangerous and stressful nature of his job, the applicant's husband relies greatly on the applicant to provide moral support needed to help him cope with the daily stress he experiences. *Id.* Counsel additionally asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico because he would be unable to find employment there, would have to leave behind his home and career in the United States, and would be separated from his family members in the United States. *Id.* In support of these assertions counsel submitted the following documentation: Affidavits from the applicant and her husband, birth certificates for the applicant's husband and his immediate family members, bank statements and documentation related to the mortgage on the home owned by the applicant's husband, copies of a high school diploma and master's degree for the applicant's husband, family photographs, letters from a neighbor and from the applicant's design school in support of her application, and a letter from the applicant's husband's supervisor at the Chicago Police Department. 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.

A waiver of the bar to admission resulting from violation of 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 alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s husband. 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 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. *Id.* at 566. The BIA has further stated:

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).

In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the 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). 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).

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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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 twenty-five year-old native and citizen of Mexico who entered the United States without inspection in 1983, when she was ten years old. The applicant remained in the United States until July 28, 2004, when she crossed the border into Canada near Niagara Falls, New York. She was paroled into the United States the same day, and has remained in the United States since that date. She married her husband, a native and citizen of the United States, on April 27, 2001. They reside together in Chicago, Illinois.

Counsel asserts that the applicant’s husband would suffer extreme emotional and physical hardship if the applicant were removed to Mexico and he remained in the United States. In support of these assertions, counsel submitted an affidavit from the applicant’s husband and a letter from his supervisor at the Chicago Police Department. In his affidavit the applicant’s husband states that he works in a special unit that deals with narcotics and drug crimes in the most dangerous parts of the city. *See Affidavit of [REDACTED]* dated February 9, 2006. He further states,

I risk my life every day making arrests of people who want to shoot me and my fellow police officers. The constant fear of my wife’s potential deportation is distracting to me. My colleagues can see that I have been distracted and . . . I have informed them of the denial . . . of my wife’s case. I work at a job where I risk my life everyday for the safety of the public and myself. Depression could cost me my life if I mess up.

A letter from the applicant’s husband’s supervisor states that he is an excellent, dedicated policeman who has never needed to be disciplined and is a leader to the other officers on his team. *Letter from [REDACTED] [REDACTED] Special Operations Section, Chicago Police Department.* The letter further states that the applicant’s husband had recently exhibited a change in behavior and “his work ethic and activity has severely suffered.” *Id.* [REDACTED] states that he has taken a “drastic turn” and other officers have approached him concerning safety issues related to the changes in the applicant’s husband’s behavior. *Id.* The applicant additionally states that she helps her husband emotionally and waits up for him and listens to him when he needs to talk about a stressful day. *Affidavit of [REDACTED] dated February 9, 2006.*

The statements from the applicant’s husband and his supervisor suggest that he is distracted and possibly experiencing symptoms of depression due to concerns about the applicant’s immigration status. The record further establishes that the applicant’s husband works for a specialized unit of the police force and this work places his life in danger. Because of the stress related to this type of career as well as the physical danger to himself and his colleagues that can result if he is not able to concentrate on his work, it appears that the emotional hardship that would result if he were separated from the applicant would be unusual or beyond that which would normally be expected upon deportation or exclusion. The emotional hardship the applicant’s husband would experience, when combined with other hardships, such as the inability to have children and

raise a family together as both the applicant and her husband state they wish to do, would amount to extreme hardship if the applicant were removed and she remained in the United States. This finding is largely based on evidence submitted with the appeal that documents the nature of the applicant's husband's career and the changes in his behavior resulting from denial of the applicant's waiver application. It appears that separation from the applicant would cause the applicant's husband great emotional distress that would jeopardize his mental health and possibly his physical safety. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Counsel additionally asserts that the applicant's husband would suffer extreme hardship if he were to relocate to Mexico with the applicant. In support of this assertion, counsel submitted copies of birth certificates for the applicant and his siblings indicating they were born in Chicago, statements from the applicant and her husband indicating that their entire extended family resides in the United States and they have no family ties or support in Mexico, copies of family photographs, and income tax returns and documentation related to the mortgage on the home owned by the applicant's husband.

Counsel asserts that the applicant's husband would suffer emotional hardship if he relocated to Mexico because he is a United States citizen of Puerto Rican descent who has no family ties there, and the applicant herself has no relatives there except for her elderly grandparents, who themselves receive financial support from relatives in the United States. The applicant's husband states in his affidavit that all of his family is in the United States or Puerto Rico and his parents and two siblings live in Illinois. He further states that in Mexico he would be unable to work in law enforcement, the one field where he has extensive experience. The AAO notes that in addition to having worked for the Chicago police force since 1998, the applicant's husband also has a master's degree in law enforcement administration that he obtained while working for the police force with the city of Chicago paying his tuition. *See diploma from Calumet College of St. Joseph*. He states that he would give his life to defend the United States, and for this reason first enlisted in the U.S. Naval Reserves and later joined the Chicago Police department. Other documentation on the record indicates that the applicant's husband earned about \$70,000 per year in 2002 and 2004, the applicant is not currently working but is pursuing a degree in interior design, and once she completes her studies, she and her husband plan to have children. *See affidavit of* [REDACTED] *dated November 30, 2005.*

Counsel additionally asserts that due to economic conditions in Mexico, the applicant would be unable to find employment and support himself and his family if he relocated there. No documentation of conditions in Mexico was submitted with the waiver applicant, but the applicant states in her affidavit that her elderly grandparents, who are her only relatives still residing in Mexico, are unable to support themselves on the farm they own and receive financial support from relatives in the United States. Further, the applicant's husband was born in Chicago, and although his parents are from Puerto Rico, he states that he always attended school in the United States and "never learned how to speak formal Spanish."

When considered in aggregate, the factors of hardship to the applicant's husband should he relocate to Mexico constitute extreme hardship. He would have to abandon his family ties in the United States, including the members of his immediate family that live in close proximity to his home in Chicago, and relocate to a country where neither he nor his wife have significant family ties. Further, he would have to give up a career that is meaningful to him, and would suffer financially due to loss of his income and therefore his home in the United States. Further, it appears he would have difficulty finding employment in Mexico due to his limited

knowledge of Spanish and conditions in Mexico. These emotional and financial hardships combined would amount to extreme hardship if the applicant were removed from the United States and her husband relocated to Mexico.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's immigration violation, though the AAO notes that the applicant was brought to the United States as a child and therefore did not make the decision to enter the country unlawfully. The favorable factors in the present case are the applicant's significant family ties and length of residence in the United States; hardship to her husband if he is separated from the applicant or relocates to Mexico; letters from her neighbors and from the design school the applicant attends and where she has made the dean's list indicating that she is disciplined and hard-working; and the applicant's lack of a criminal record.

The AAO finds that the applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh this adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.