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U.S. Citizenship
and Immigration
Services

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H4

FILE:

[REDACTED] Office: PHOENIX, AZ
RELATES)

Date: NOV 24

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

A handwritten signature in cursive script, 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 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 ten years of her last departure from the United States. The applicant is married to a lawful permanent resident spouse. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their three United States citizen children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated April 26, 2006.

On appeal, counsel asserts that he will submit a brief within 30 days. Form I-290B, dated May 22, 2006. To date, counsel has not submitted a brief. The AAO has attempted to communicate with counsel to provide him with an opportunity to submit the promised brief, but has been unable to locate him. The record includes a statement submitted by counsel on March 15, 2006 in which he asserts that the applicant is not inadmissible, but, should the AAO find her to be inadmissible, she has demonstrated that her qualifying relative would suffer extreme hardship if she were removed from the United States. *Attorney's statement*.

In support of these assertions, the record includes, but is not limited to, a statement by counsel; and tax statements for the applicant and her spouse. The entire record was reviewed and considered in rendering 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 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.

In the present application, the record indicates that the applicant entered the United States without inspection in August 1991. *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant applied for temporary resident status as a special agricultural worker. *Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker*. This application was denied, and the applicant appealed to the Office of Administrative Appeals, which subsequently dismissed the appeal. *Decision of the Office of Administrative Appeals*, dated April 14, 1999. The applicant remained in the United States. *Form I-601, Application for Waiver of Ground of Excludability*. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on April 29, 2004. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a 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 [REDACTED] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*.

The AAO acknowledges counsel's assertion that the applicant is not inadmissible as she had a pending Special Agricultural Worker (SAW) application for which she received a work permit. *Attorney's statement*, dated March 10, 2006. As previously noted, however, the applicant's SAW application was denied and her appeal of that decision was dismissed on April 14, 1999. As of that date, the applicant no longer had any applications pending and did not have legal status. Therefore, the applicant accrued unlawful presence from April 14, 1999, the date her appeal was dismissed, until April 29, 2004, the date she filed the Form I-485. The applicant was authorized advanced parole on September 15, 2004 and, thereafter, departed the United States, returning on October 8, 2004. *Form I-512, Authorization for Parole of an Alien into the United States*. The applicant again departed the United States on September 10, 2005. *Form I-601, Application for Waiver of Ground of Excludability*. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of her 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 a 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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or

United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico and his parents continue to live there. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The record does not address what additional family members, if any, the applicant's spouse may have in Mexico. The AAO notes that the record fails to identify what hardship the applicant's spouse would endure if he accompanied the applicant to Mexico. There is nothing in the record to demonstrate that the applicant or her spouse would be unable to contribute to their family's financial well-being from a location other than the United States. The record does not include any published country condition reports documenting the economic situation in Mexico. Furthermore, the record does not address whether the applicant's spouse suffers from any significant health conditions for which he would be unable to receive adequate treatment in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. Counsel asserts that the applicant has six children who are legally in the United States. *Attorney's statement*, dated March 15, 2006. The AAO notes that on the Form I-601, the applicant states she has three children and the record includes documentation only for these children. *Form I-601, Application for Waiver of Ground of Excludability; United States birth certificates*. Counsel asserts that if the applicant were in Mexico, the applicant's spouse would not be able to take care of the children's needs and also provide financially for the home. *Attorney's statement*, dated March 15, 2006. The AAO notes that the applicant's children are not qualifying relatives in this particular case, and, while the effect of a child's suffering upon a qualifying relative will be considered, there is nothing in the record that addresses how the hardship experienced by the applicant's children would affect the applicant's spouse. Furthermore, although the AAO acknowledges the assertions made by counsel, it notes that the record fails to include any documentary evidence to support his assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is nothing in the record to demonstrate that the applicant would be unable to support herself or contribute to her family's financial well-being from Mexico, e.g., country conditions materials on the Mexican economy. Moreover, the record fails to demonstrate that the applicant would be unable to provide financially for his children in the absence of the applicant. The record also fails to include evidence that the applicant's spouse would be unable to obtain assistance in caring for his children.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.