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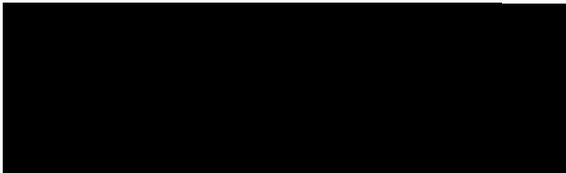
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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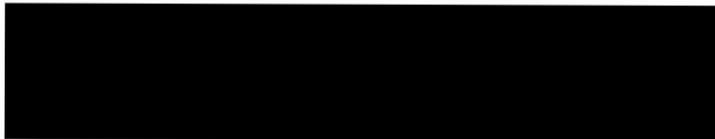
FILE: [REDACTED] Office: CIUDAD JUAREZ, MX
(Related: CDJ 2004 626 352)

Date: SEP 17 2008

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Officer in Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

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. The applicant presently seeks a waiver of her ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge determined that the applicant had failed to establish a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that evidence in the record establishes her husband would suffer extreme hardship if she is denied admission into the United States.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny alien (other than an alien lawfully admitted for permanent residence) who –

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- (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.

The record reflects that the applicant entered the United States unlawfully in 1993. The applicant remained in the United States until April 2005, at which time she departed the country and traveled to Mexico. The applicant has remained outside of the United States since April 2005.

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years. *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006.)

The applicant was unlawfully present in the United States for more than one year between April 1, 1997 (the date section 212(a)(9)(B)(i) of the Act provisions went into effect) and April 2005, and she is seeking admission less than ten years after her departure from the United States. The applicant is therefore subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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.

The evidence in the record reflects that the applicant is married to a U.S. citizen. The applicant's husband is a qualifying family member for waiver of inadmissibility purposes. A U.S. citizen or lawful permanent resident child is not a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes. Hardship to the applicant's child may therefore only be considered to the extent that it causes extreme hardship to the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994) that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have consistently held that the common results of deportation are insufficient to prove extreme hardship. *Perez v. INS, supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The record contains the following evidence relating to the applicant's extreme hardship claim:

A birth certificate reflecting that the applicant's husband [REDACTED] was born in Texas on January 6, 1978.

An April 5, 2005, letter from [REDACTED] stating that the applicant means a lot to his family, and that he and his daughter will be depressed if the applicant is not allowed to live with them in the United States.

A September 12, 2005, affidavit signed by [REDACTED] indicating that the applicant and his daughter live in Mexico, that [REDACTED] visits them once or twice a week, and that Mr. [REDACTED] has to work a second job during his vacations and his days off in order to pay for his own expenses and those of his family in Mexico. [REDACTED] states that his daughter has

suffered from abdominal pain and constipation, and that she had to see doctors, first in the U.S. and later in Mexico, and take medicine for her ailments. [REDACTED] states further that his daughter cries because she misses him, and that this saddens him.

A December 27, 2005, affidavit signed by [REDACTED] stating that he was born in Texas, that he and his wife married in Texas on July 28, 2001, and that they had a child in Texas on November 29, 2001. [REDACTED] indicates that he works full-time, and that because his wife is not in the U.S. to care for their daughter, he is under pressure to have his mother care for her. [REDACTED] states that his mother is ill, and that it is difficult for her to care for his daughter. He additionally indicates that his separation from his wife causes him stress which makes it difficult to fully perform his job. [REDACTED] states that he would be unable to pay his bills and the mortgage payment on a new trailer home if he lost his job. He indicates further that, for financial reasons, he must work summer and Christmas vacations at a second job, and he states that he needs his wife by his side in the United States.

Three letters written by family friends indicating that [REDACTED] is suffering hardship due to his separation from his wife.

Documents reflecting [REDACTED] full-time and overtime pay.

June 2005, U.S. loan and Mexican utility bill and apartment rental information.

June 2005, medical information reflecting that [REDACTED] daughter was examined and treated for symptoms including abdominal cramps after eating, and constipation.

A marriage certificate and wedding photos of the applicant and her husband.

A copy of the U.S. Department of State, Country Reports on Human Rights Practices in Mexico for the year 2004.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her husband would experience extreme hardship if he remains in the U.S. without the applicant. The medical evidence contained in the record fails to demonstrate that [REDACTED] daughter suffers from a serious or continuing medical ailment that would cause [REDACTED] to experience hardship. The photos, letters and affidavit evidence contained in the record also fail to establish that [REDACTED] would suffer from hardship beyond that normally experience upon the removal of a family member. The AAO additionally notes that the applicant failed to establish that his wife is unable to work. Moreover, “[t]he 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.)

The applicant did not claim that her husband would suffer hardship if she were denied admission into the United States and [REDACTED] moved with his family to Mexico. The AAO notes further that the Mexican

[REDACTED]
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country condition evidence submitted on appeal is general and without context, and fails to demonstrate that [REDACTED] would suffer extreme hardship if he moved with the applicant to Mexico.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband would suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed. The application is denied.