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U.S. Citizenship
and Immigration
Services

H4

FILE:

Office: MEXICO CITY

Date: MAR 18 2009

(CDJ 2004 659 340 relates)

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

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, Mexico City. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her husband, daughter, and step-children in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, the applicant's husband, [REDACTED], claims he has suffered extreme hardship since his wife left the United States.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, Mr. [REDACTED] indicating they were married on March 20, 2002; statements from the applicant and her two step-daughters; declarations from [REDACTED] a copy of [REDACTED]'s birth certificate; copies of the birth certificates of [REDACTED]'s two daughters from a previous relationship; a copy of the birth certificate of the couple's daughter; a copy of the divorce decree for [REDACTED] previous marriage; photos of the applicant and his family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 this case, the district director found, and the applicant does not contest, that the applicant entered the United States in March 2002 without inspection and remained until June 2005. The applicant accrued unlawful presence of over three years. She now seeks admission within ten years of her 2005 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant's children or step-children may experience is not a permissible consideration under the statute. *Id.* 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states that he loves his wife very much. He states that his wife is the primary caretaker of their daughter as well as his two daughters from a previous marriage. He states that his wife takes care of the entire household, including all of the cooking, cleaning, and bills. Mr. [REDACTED] claims that since the applicant left the United States, he had to request a second shift at work in order to pay \$120 per week for child care. Mr. [REDACTED] further states that he has no family in

Mexico, his wife has very little family in Mexico, and that their daughter has never been there. *Declaration of* [REDACTED] undated; *Declaration of* [REDACTED] dated December 7, 2005.

The applicant states that she loves her husband and their daughter very much and that she cannot imagine being separated from them. She claims her husband will be unable to care for their daughter because he is working two jobs. *Statement from* [REDACTED] dated May 25, 2005. Mr. [REDACTED] daughters from his previous marriage state that they love their step-mom and that she takes good care of them. They state that she takes them to school and picks them up, feeds them, and buys them clothes and other necessary items. They also state that the applicant gives them great advice and is like one of their moms. *Statement from* [REDACTED] and [REDACTED] undated.

Even assuming, although this has not been established, that [REDACTED] would suffer extreme hardship if he moved to Mexico to be with his wife, nonetheless, he has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that he has suffered or will suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States, there is nothing in the record to show that the hardship described by the applicant and her husband are unusual or beyond what would normally be expected. Rather, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

With respect to the additional day care expenses [REDACTED] has been paying since his wife left the United States, the AAO notes that the applicant does not make a claim of extreme financial hardship. Indeed, as counsel notes in their brief, [REDACTED] is employed and earns \$68,000 per year. The applicant did not work outside the home while she was in the United States and, therefore, did not contribute financially to the family. In any event, even if the denial of the applicant's waiver application results in some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

To the extent the applicant and contend their daughter will be heartbroken due to her separation from the applicant, again, although the AAO is sympathetic to their circumstances, as discussed above, hardship the applicant's children or step-children may experience is not a permissible consideration under the statute. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(v) 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.