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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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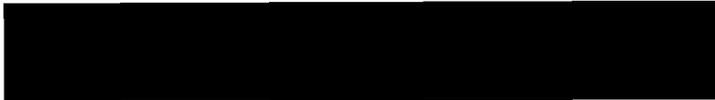


Office: CIUDAD JUAREZ

Date:

FEB 16 2010

IN RE:



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

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and 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 resided in the United States from May 5, 2001, when she entered the country without inspection, to December 2005, when she returned to Mexico. She had previously been admitted to the United States as a visitor on several occasions from 1997 to 2000, and on April 16, 2001, she withdrew her application for admission and returned voluntarily to Mexico when it was determined that she intended to resume her residence with her husband in the United States and had committed fraud by concealing her marriage to a Lawful Permanent Resident when applying for a Border Crossing Card. She 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 for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 return to the United States and reside with her husband.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated December 6, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband is suffering emotional and financial hardship as a result of separation from the applicant. *See Counsel's Statement in Support of the Appeal* at 2-3. Specifically, counsel states that the applicant's husband would suffer extreme emotional and economic hardship if the applicant's waiver application is denied "due to separation from his wife, or separation from his family and career, a choice he will [be] forced to make." *Counsel's Statement* at 2. In support of the appeal counsel submitted letters from the applicant and her husband, letters of recommendation from family friends and relatives, documentation related to the applicant's husband's business, birth certificates for the applicant's husband's children and grandchildren in the United States, copies of family photographs, and income tax returns and financial documents for the applicant's husband. 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.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Before entering the United States without inspection in May 2001, the applicant had previously been admitted to the United States as a visitor on several occasions from 1997 to 2000. On April 16, 2001, she withdrew her application for admission and returned voluntarily to Mexico after attempting to reenter as a visitor when it was determined that she intended to resume her residence with her husband in the United States. The applicant stated under oath to an immigration officer on that date that she did not inform the U.S. Consulate she was married to a Lawful Permanent Resident when she applied for a Border Crossing Card in May 2000. She is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa, other documentation, or admission to the United States through willful misrepresentation of a material fact. The applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 Board of Immigration Appeals (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.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court 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 forty-one year-old native and citizen of Mexico who resided in the United States from May 5, 2001, when she entered the country without inspection, to December 2005, when she returned to Mexico. The applicant's husband is a fifty-six year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico and her husband resides in Mission Hills, California.

Counsel asserts that the applicant's husband would experience hardship if he departed the United States because he would have to abandon his family, career, and community that he has established in the United States, where he has resided for most of his life. Income tax returns and financial documents indicate that he has business and property ties, and letters from his adult daughters as well as birth certificates of his grandchildren and family photographs establish that he has extensive family ties in the United States. In light of his length of residence in the United States, where he has resided since he was a child, as well as his extensive family and community ties, the applicant's husband has established that he would suffer extreme emotional and financial hardship if he were to relocate to Mexico.

Counsel further asserts that the applicant's husband is suffering extreme emotional hardship due to separation from the applicant, and in support of the assertion submitted letters from the applicant and her husband and from family friends and relatives. The applicant's husband states that that the applicant's absence from the country has created mental stress and physical hardship for him and has taken a toll on his performance at work and his physical health. See *Letter from* [REDACTED] dated January 2007. He further states that the applicant has started fertility treatments because they have been unable to conceive a child, and "the prospect of permanent childlessness is a tragedy" for

him and the applicant. *See Letter from* [REDACTED] Letters from the applicant's stepdaughter and from family friends also state that the applicant's husband has been devastated by the denial of the applicant's waiver application and their separation has taken a toll on him both physically and emotionally.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant, and the separation has caused him much distress since they have been trying unsuccessfully to conceive a child. The record contains no evidence of the applicant's husband's mental health or the psychological effects of their separation and no documentation about the applicant's fertility treatments and their efforts to conceive a child. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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 evidence on the record is insufficient to establish that any emotional difficulties he is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by separation from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband claims that he is suffering financial hardship because he must support the applicant in Mexico and take time to travel there, and further states that he plans to rely on the applicant to help him run his business in Arizona, which will provide additional income once he retires. Documentation submitted with the appeal indicates that the applicant's husband earned about \$78,000 in 2005 and about \$80,000 in 2004, and the applicant earned about \$2400 and \$2700 in those years. Income tax returns further indicate that additional income was earned from the applicant's husband's restaurant. The record establishes that the applicant's husband is able to support himself financially and does not rely on the applicant's income, and there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact resulting from supporting two households and traveling to Mexico appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's wife would experience if she remains in the United States is other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.