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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



U.S. Citizenship
and Immigration
Services

H6

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

JUL 27 2010

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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:

SELF-REPRESENTED

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).

Thank you,

Perry Rhew
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 lawful permanent resident and 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 reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated November 23, 2007.

The record contains, *inter alia*: letters from the applicant's husband, Mr. [REDACTED] letters from the applicant's son and daughter; and 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:

(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, district director found, and the applicant does not contest, that she entered the United States without inspection in July 1995 and remained until January 2007. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure from the United States in January 2007. The applicant accrued unlawful presence of over nine years. She now seeks admission within ten years of her January 2007 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 and seeking admission to the United States within ten years of her last departure.

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). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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.

In this case, the record reflects that the applicant wed [REDACTED] a native of Mexico and a lawful permanent resident of the United States, on October 20, 1991, in Mexico. According to Mr. [REDACTED] the couple has a son, [REDACTED] who was born in Mexico on September 7, 1992, a daughter, [REDACTED] who was born in the United States on October 22, 1995, and a son, [REDACTED] who was born in the United States on October 14, 1999. The applicant's spouse is a qualifying relative for purposes of a section 212(a)(9)(B)(v) waiver. Hardship to the applicant's children will be considered only insofar as it results in hardship to the applicant's spouse.

The applicant's husband, Mr. [REDACTED] states that since his wife's departure from the United States, their family home has been totally disrupted, seriously affecting their emotional and psychological well-being. Mr. [REDACTED] states that the separation is causing tremendous anxiety to the point that they

cannot eat or sleep. He contends that his children miss their mother and do not want strangers caring for them. According to Mr. [REDACTED] there is no one to cook the right kind of meals for his children or to see that they are dressed properly. He states that the children cry when they wake up in the morning and ask for their mother. He claims it is very difficult for him to leave work whenever his children need to get picked up early from school or go to a doctor's appointment. In addition, Mr. [REDACTED] states that even though he was a lawful permanent resident who could have filed a petition on behalf of his wife, he worked in the fields and had limited contact with the outside world, so he did not know he had that opportunity. *Letters from* [REDACTED] dated January 26, 2007, and December 4, 2007.¹

A letter from the couple's son, [REDACTED] states that he misses beginning each day as a family. Armando states that when he gets to school, he cannot concentrate on his work because he is thinking so much about his family. He contends that when he gets hungry, he has to wait for his father to get home and bring him something, but it is not the same as his mother's cooking. Armando states that while he waits for his father, he starves for food. *Letter from* [REDACTED] dated January 26, 2007.

A letter from the couple's daughter, [REDACTED], states that she misses her school in the United States. She states that she and her little brother have to remain in Mexico with their mother until she "finish[es] the penalty." According to [REDACTED] she and her brother cannot live with their father in the United States because he does not have time to take care of them and does not have enough money to pay for someone to watch them. *Letter from* [REDACTED] undated.

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

The AAO recognizes that Mr. [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, Mr. [REDACTED] does not discuss the possibility of moving back to Mexico, where he was born and where he married the applicant, to avoid the hardship of separation and he does not address whether such a move would represent a hardship to him.

If Mr. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The BIA 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, supra*, 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.

¹ To the extent Mr. [REDACTED] submitted a letter written in Spanish, the regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, this letter cannot be considered.

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 Mr. [REDACTED] anxiety, inability to eat or sleep, and stress of watching his children miss their mother, there is no documentation in the record showing that his hardship is beyond what would normally be expected. There is no letter from any health care professional diagnosing Mr. [REDACTED] with any mental health conditions. Moreover, Mr. [REDACTED] anxiety and possible depression are related to his separation from his wife, but he does not comment on whether his mental health might improve if he relocated to Mexico to be with his wife. In sum, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

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.