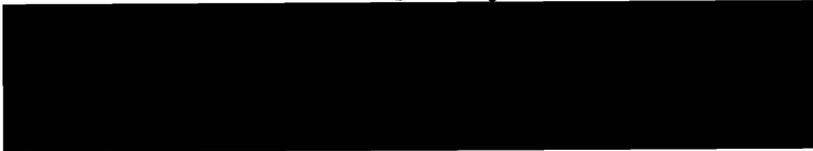




U.S. Citizenship
and Immigration
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FILE:



Office: CHICAGO, IL

Date: **MAR 03 2008**

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director (“district director”). 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with her U.S. citizen husband and four children.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *Decision of the District Director*, dated January 6, 2006.

On appeal, the applicant asserts that she has only departed the United States after obtaining advance parole, and thus her exits and reentries should not trigger inadmissibility under the unlawful presence provisions. *Statement from Applicant on Appeal*, dated March 20, 2006. The applicant states that she was not informed that she could become inadmissible by departing the United States. *Id.* The applicant provides that her U.S. citizen husband and children will suffer emotional and economic hardship should she be prohibited from remaining in the United States. *Id.*

The record contains a statement from the applicant in support of the appeal; copies of documentation in connection with the applicant’s parole into the United States; a copy of the applicant’s birth certificate; a copy of the applicant’s marriage certificate; a copy of the applicant’s husband’s permanent resident card; copies of the applicant’s tax documents; copies of the applicant’s children’s birth certificates; verification of the applicant’s and her husband’s employment; a copy of the applicant’s passport, and; documentation in connection with the applicant’s registration in the Family Fairness Program. 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.

(ii) Construction of unlawful presence.-For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

....

(III) Family unity.-No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

....

(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 matter, the record indicates that the applicant entered the United States without inspection. She was granted temporary legal residence on April 29, 1988. The applicant was granted indefinite voluntary departure pursuant to the Family Fairness Program (later known as the Family Unity Program) in 1989. On January 29, 1991, the applicant was granted employment authorization pursuant to the Family Fairness Program. On July 14, 1992, the applicant was issued an advance parole document due to “Emergent humanitarian conditions.” *Form I-512 Advance Parole Document*, dated July 14, 1992. The applicant was paroled into the United States on July 1, 1993. *Id.*

On March 28, 2000, the applicant filed a Form I-817, Application for Voluntary Departure under the Family Unity Program. An officer notation on the form indicates that the application was not an extension of voluntary departure under the Family Unity Program, but an initial application. The applicant was granted voluntary departure from September 5, 2000 to September 5, 2002. The applicant was issued an advance parole document on July 2, 2001, and she was paroled into the United States on August 15, 2001. The applicant filed a Form I-485 application to adjust her status to permanent resident on December 22, 2004.

Based on the evidence of record, the applicant has failed to show that she has not accrued unlawful presence. The record contains no documentation to reflect whether the applicant maintained voluntary departure status after her parole on July 1, 1993 and prior to her filing of a Form I-817 Application for Voluntary Departure under the Family Unity Program on March 28, 2000. The regulation at 8 C.F.R. § 236.15(b) provides that applicants may be granted voluntary departure under the Family Unity Program for a period of two years. The applicant submitted evidence that suggests that she continued to receive benefits under the Family Unity

Program as of her parole on July 1, 1993. Thus, interpreting the evidence of record in a light most favorable to the applicant, the evidence suggests that she may have continued in voluntary departure status for an additional two-year period, until July 1, 1995. *See* 8 C.F.R. § 236.15(b).

However, the applicant's Form I-817 application filed on March 28, 2000 reflects that it is not an extension of existing voluntary departure status. Thus, at some time prior to the application, the applicant's previously granted voluntary departure status expired and she was in the United States unlawfully.

As presently constituted, the record does not show that the applicant was in a lawful immigration status between July 1, 1995 and March 28, 2000. The unlawful presence provisions under the Act were not enacted until April 1, 1997, thus the applicant did not begin to accrue unlawful presence until that date. However, the period from April 1, 1997 to March 28, 2000 totals approximately three years. As the applicant departed the United States and thereafter applied for entry, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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. Hardship the alien herself experiences upon being found inadmissible is not a direct concern in section 212(a)(9)(B)(v) waiver proceedings. 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 (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 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.

On appeal, the applicant asserts that separating her from her husband and four children will cause hardship. *Statement from Applicant on Appeal* at 2. The applicant explained that her four children were born in the United States and they are U.S. citizens, suggesting that they would have difficulty adapting to life in Mexico. *Id.* The applicant states that her husband is the "bread winner" for their family, and she suggests that he would have difficulty caring for his children and providing them with proper guidance alone. *Id.* The applicant states that two of her children are "under 'special education'" and that they require special attention in school and at home. *Id.*

The applicant asserts that USCIS approved two cases based on facts similar to those under consideration in the present proceeding. *Statement from Applicant on Form I-290B*.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if she is prohibited from remaining in the United States. The applicant has submitted little evidence and explanation

to describe the hardships her husband would experience should her waiver application be denied. She suggests he would face economic challenges, yet the applicant has not provided evidence of her husband's current income or her household's ordinary expenses, such that the AAO can assess the economic impact the applicant's absence would have on her husband.

The applicant asserts that separation would cause hardship for her husband, yet the applicant's husband has not submitted a statement to explain his reactions to the applicant's immigration difficulties or the affect her departure would have on him. Without such explanation or evidence, the AAO is unable to infer that the applicant's husband would experience emotional hardship that rises to the level of extreme hardship.

The applicant describes hardships that her children would experience should her waiver application be denied. Hardship to an applicant's child is not direct concern in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant's husband will endure emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his children's loss of the applicant's daily presence. However, the applicant has not stated whether she and her husband have other family members in the United States who may assist her husband with childcare. As discussed above, the record does not clearly show the applicant's husband's economic resources such that the AAO can assess the financial challenges he may face as a result of having responsibility for his children. Accordingly, the applicant has not submitted sufficient evidence to establish that her husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated 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 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. Thus, the applicant has not shown that her husband's hardship will rise to the level of extreme hardship should he remain in the United States.

While the applicant has briefly discussed hardship that her children may face if they relocate to Mexico, the applicant has not provided any evidence or explanation to show that her husband would experience extreme hardship should he relocate abroad to maintain family unity.

The applicant asserts that USCIS approved two cases based on facts similar to those under consideration in the present proceeding. However, the applicant has not identified the two cases or submitted relevant documentation. Thus, the AAO is unable to conclude that cases have been approved based on similar facts. It is noted that the AAO is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Based on the foregoing, the applicant has not submitted sufficient evidence to show by a preponderance of the evidence that her husband will experience extreme hardship if the present waiver application is denied. 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.