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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: HELENA Date: FEB 12 2003

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)

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. §103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Helena, Montana, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States on February 15, 1991, without lawful admission or parole. The applicant accrued unlawful presence from April 1, 1997, until he submitted an application for adjustment of status on September 25, 1999. He 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 in the United States for a period of more than one year.

The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver in order to remain in the United States and reside with his wife.

The district director determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the applicant belongs to a group of more than 50 applicants who were issued Advance Parole documents that did not contain a warning that overseas travel could affect their eligibility for adjustment of status. Counsel asserts that, in most instances, the applicants asked their local INS office whether they could travel abroad. He claims the applicants were told by employees of the Service that if they filed an Application for Travel Document (Form I-131), they would be issued an advance parole document that would allow them to travel outside of the country and then return to the United States to resume processing of their adjustment of status. However, they were not advised of the adverse consequences of traveling abroad.

Further, counsel argues that the Service's interpretation of the standard for a finding of extreme hardship, while generally accurate, does not take into account a BIA decision that further develops the standard: *Matter of L-O-G*, 21 I&N Dec. 413 (BIA 1996).

Counsel has cited case law relating to the issue of "extreme hardship" as that term is applied in matters involving suspension of deportation under former section 244 of the Act, 8 U.S.C. § 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and recodification under section 240A of the Act, 8 U.S.C. § 1230A, and redesignation as "cancellation of removal."

In the matter at hand, the alien is seeking relief from inadmissibility. Since the requirement for the alien to establish extreme hardship was included in the recent amendment, it is more

suitable to refer to case law relating to the term "extreme hardship" as applied to waivers of inadmissibility under section 212(i) of the Act than to case law relating to cancellation of removal.

Although both the former application for suspension of deportation and the present application for waiver of grounds of inadmissibility require a showing of "extreme hardship," the parameters for applying such hardship are much narrower in a waiver of grounds of inadmissibility application proceeding. In a waiver application proceeding, the applicant must show that hardship would be imposed on a spouse or parent who is a citizen or lawful permanent resident of the United States. In former suspension of deportation proceedings, the applicant could show hardship to him or herself, a parent, a spouse, or a child, and cite other peripheral equities. In the amended cancellation of removal proceedings, the alien can no longer show hardship to him or herself or to a child.

Counsel states that he has participated in lengthy discussions with the Service officials involved, and they have told him that they have been directed to strictly apply the "extreme hardship" standard to all Form I-601 waiver applications, even if they believe that the Service erred in granting the advance parole applications or in failing to warn the aliens of the potential consequences of traveling abroad with advance parole. Counsel requests that the Service apply a liberal "extreme hardship" standard that would uphold the stated interpretation of the unlawful presence provisions of the Act while allowing common sense and justice to prevail in this matter.

Whether the Service advised the applicant of the consequences of a departure from the United States is not the issue in this proceeding. The clear language of the statute is prevailing and all cases must be dealt with in a fair and equitable manner.

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

> (i) Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States, whether or not pursuant to section 244(e), prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
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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 from the United States, is inadmissible.

(v) The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This ground of inadmissibility is applicable only to aliens seeking visas or readmission to the United States. After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground inadmissibility for unlawful presence (entry without inspection) after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994). The court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to the qualifying family members is insufficient to warrant a finding of extreme hardship.

A letter from the applicant indicates that he is the main support for his family and they depend on him for assistance. He states that his wife is a homemaker and does not work.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) that reaches the level of extreme envisioned by Congress if the applicant is not allowed to remain in the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

The burden of proving eligibility in this proceeding 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.