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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: MAR 05 2007

IN RE:

[REDACTED]

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:

[REDACTED]

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 District Director, Phoenix, Arizona. 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 the 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 one year or more. 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. § 1182(a)(9)(B)(v), in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse and the application was denied accordingly. *Decision of the District Director*, dated July 22, 2005.

On appeal, the applicant's representative asserts that ample evidence of extreme hardship was presented and the district director misinterpreted the law. *Form I-290B*, received August 2, 2005.

The record includes, but is not limited to, the applicant's representative's brief and supplemental brief, the applicant's spouse's statement, financial documents and letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States in visitor status on April 11, 1993 with an authorized period of stay until October 9, 1993. The applicant did not depart the United States when her authorized period of stay expired, she filed an application to adjust status on June 27, 2001 and she departed the United States with an advance parole document on or around December 2003. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until June 27, 2001, the date she filed her application to adjust status. The applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission within 10 years of the date of her departure.

The applicant's representative asserts that *Acosta v. Gonzales*, 439 F.3d 550 (9th Cir. 2006) allows aliens who are barred under section 212(a)(9)(C)(i)(I) or 212(a)(9)(C)(i)(II) of the Act to be granted adjustment of status under section 245(i) of the Act. *Supplemental Brief*, at 2, dated January 25, 2007. The AAO notes that the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) or 212(a)(9)(C)(i)(II) of the Act, therefore, the applicant's representative's assertion will not be addressed.

Section 212(a)(9)(B)(i)(II) 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.

Section 212(a)(9)(B)(v) of the Act provides:

(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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of 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. 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 are applicable to section 212(a)(9)(B)(v) waiver proceedings and include the presence of lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Mexico or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Mexico. The applicant's representative states that the applicant's spouse has one child. *Brief in Support of Appeal* at 2, dated August 15, 2005. The applicant's representative states that the applicant's spouse is a participating member of his local church, he is active in his community and he is friends with his neighbors. *Id.* at 4. The applicant's representative states that the applicant's spouse has no ties to Mexico other than distant relatives, Mexico is a foreign country to him and he will lose his retirement benefits if he relocates. *Id.* at 5. The record reflects that the applicant's spouse is originally from Mexico and is therefore, familiar with the language and culture. The applicant's representative states that Mexico's

economy cannot provide employment to its own citizens, much less non-citizens like the applicant's spouse, and the applicant's spouse will join the masses who compete for subsistence wages or live in abject poverty. *Supra*. The record does not establish the country conditions asserted by the applicant's representative. Moreover, although the applicant's spouse is a U.S. citizen as a result of his 2001 naturalization, he remains a citizen of Mexico. As of March 20, 1998, the Mexican Constitution was amended to allow for the retention of Mexican nationality when acquiring that of another country. *Consular Services, Embassy of Mexico in Canada*, <http://www.embamexcan.com/CONSULAR/MexicanCitizenship.shtm> (February 28, 2007). The applicant's representative states that the applicant's spouse is guaranteed basic health services through his social security retirement benefits and that Mexico's health system is virtually non-existent due to the inability to afford services. *Id.* at 7. The record reflects that the applicant's spouse is receiving monetary retirement benefits, but there is no evidence that his presence in the United States is required to receive these benefits and that he cannot use this money to obtain medical treatment in Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he shares a harmonious relationship with the applicant, they have lived together in Arizona since 1991, he is 67 and needs her companionship, and he has no other relatives in the city. *Statement of Applicant's Spouse*, at 1-2, dated January 25, 2005. Counsel states that the applicant's spouse would be required to support two households on his limited income from social security and the only person who can care for him is the applicant. *Brief in Support of Appeal* at 8. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. It finds the record to contain no evidence that the hardship that would be experienced by the applicant's spouse would rise above that normally experienced by separated as a result of removal.

After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Mexico or in the event that he remains in the United States.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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. Therefore, the letters of support for the applicant will not be addressed.

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.