



**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. 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 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 his last departure from the United States. The record indicates that the applicant's mother is a lawful permanent resident of the United States and he is the beneficiary of an approved Immigrant Petition for Foreign Worker (Form I-140). The applicant 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 with his wife and three United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 24, 2006.

On appeal, the applicant, through counsel, asserts that the applicant is eligible for the waiver. *Form I-290B*, filed June 26, 2006. Counsel also states that the officer who interviewed the applicant at his adjustment interview "demanded an I-601 waiver for an arrest without prosecution suffered by [the applicant]." *Counsel's Brief*, page 2, dated July 3, 2006. The AAO notes that on January 25, 2006, counsel was sent a request from Citizenship and Immigration Services (CIS) for a Form I-601 from the applicant for his "unlawful presence in the United States." In addition, the letter of denial clearly states the applicant is inadmissible for unlawful presence. The record does not reflect that CIS ever indicated that the applicant was inadmissible for criminal reasons.

The record includes, but is not limited to, counsel's brief, birth certificates for the applicant's children, and statements from the applicant's friends and family. **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:

(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.
- ...
  - (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.

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident children. In the present case, the applicant's mother is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's mother.

In the present application, the record indicates that the applicant initially entered the United States without inspection in 1985. On December 21, 1989, the applicant and Ms. [REDACTED] were married in Mexico. On August 7, 1990, the applicant's Form I-140 was approved. In December 2000 or January 2001, the applicant departed the United States, and re-entered the United States without inspection at San Ysidro, California, in March 2001. On August 9, 2002, the applicant's mother, [REDACTED] became a lawful permanent resident of the United States. On March 5, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 1, 2006, the applicant filed a Form I-601. On May 24, 2006, the District Director denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his lawful permanent resident mother.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until December 2000 – January 2001, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his December 2000 – January 2001 departure from the United States. The applicant is, therefore, 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 more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (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 to a qualifying relative. The 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.

Counsel asserts that the applicant's children would face extreme hardship if they joined the applicant in Mexico. Counsel states "[t]he District Director could not have considered the age of [the applicant's] dependant [sic] children, their school records and the effect of these United States Citizen Children being removed to a country where they have never been and are neither residents nor citizens." *Counsel's Brief*, page 4, *supra*. However, as noted above, the applicant's children are not qualifying relatives for a section 212(a)(9)(B)(i)(II) waiver. The applicant's lawful permanent resident mother is the qualifying relative; however, the AAO notes that the applicant's mother did not provide a statement or an affidavit regarding the extreme hardship she would suffer if the applicant were removed from the United States. Additionally, counsel fails to make any argument that the applicant's mother will suffer any extreme hardship or that she is suffering from any emotional or psychological problems.

Counsel fails to establish extreme hardship to the applicant's mother if she remains in the United States or joins the applicant in Mexico. The AAO notes that the applicant made no claim that his mother would suffer any hardship if she joined the applicant in Mexico. The AAO notes that the applicant's mother is a native of Mexico, who spent her formative years in Mexico, and speaks Spanish. Additionally, the applicant makes no claim that he cannot return to Mexico and obtain a job in Mexico that would help support his mother. He is also a native of Mexico, who spent all of his formative years in Mexico, and speaks Spanish. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). As a lawful permanent resident, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. No documentation was submitted to indicate that the applicant's mother will experience financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to his mother. The applicant's mother faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, 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, *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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 mother 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 he 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.