identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H4

FEB 03 2005

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California. 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 determined 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. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated September 9, 2003.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is removed to Mexico. Counsel contends that owing to the substantial equities present in the application the waiver should be granted. *Appeal of a Denial of a Waiver of Inadmissibility (Form I-601)*, dated October 8, 2003.

In support of these assertions, counsel submits a statement from the applicant's spouse; a copy of the marriage certificate for the applicant and his spouse; copies of the United States birth certificates for the applicant's spouse and children; a copy of the title to the applicant's home; a letter from the employer of the applicant's spouse; a copy of an order to withhold income for child support; copies of the birth certificates of the applicant's sisters and a copy of the naturalization certificate of the mother of the applicant's spouse. The entire record was reviewed and considered in rendering a decision.

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.

In the present application, the record indicates that the applicant entered the United States without inspection on or about February 14, 1988. On June 22, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 26, 1999, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart from the United States on January 30, 2000 and reenter the United States on February 6, 2000.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 22, 1999, the date of his proper filing of the Form I-485. The applicant is, therefore, 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 one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his 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. Hardship the alien himself experiences upon deportation is irrelevant to 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.

Counsel asserts that the applicant's wife would face extreme hardship as a result of relocating to Mexico in order to remain with the applicant. Counsel states that the applicant's spouse was born and raised in the United States and speaks only English. *Appeal of a Denial of a Waiver of Inadmissibility (Form I-601)* at 2. The applicant's spouse indicates that moving to Mexico would impose extreme hardship on her because her family would have no home in which to live and she would have a difficult time obtaining employment. *Statement of Extreme Hardship: Declaration of Patricia Franco*, dated October 7, 2003. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of

denial of the applicant's waiver request. The AAO finds that the record fails to establish extreme hardship if the applicant's spouse relocates to Mexico to remain with the applicant. Unsubstantiated assertions by the applicant's spouse and counsel do not, standing alone, form the basis for a finding of extreme hardship.

Further, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain proximity to family members, her employment and residency in her country of birth. Counsel states that the applicant's spouse would be unable to afford the family expenses in the absence of the applicant. *Appeal of a Denial of a Waiver of Inadmissibility (Form I-601)* at 3. The applicant's spouse indicates hat she works part-time and cannot afford the mortgage and car payments without the contribution of the applicant. *Statement of Extreme Hardship: Declaration of Patricia Franco.* The AAO notes that the situation of the applicant's spouse, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record fails to establish that the income of the applicant's spouse is insufficient to cover the cited expenses or that the applicant's spouse is unable to work full-time in order to increase her income. Further, the record does not demonstrate that the applicant will be unable to earn an income from a location outside of the United States in order to financially provide for himself and contribute to the expenses of his family. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Counsel and the applicant's spouse point out that the applicant is obligated to make monthly child support payments to his former wife for his two children from that marriage. *Id.* The AAO notes that the children of the applicant are not considered qualifying relatives for purposes of waiver proceedings under section 212(a)(9)(B)(v) of the Act and the record does not establish that the applicant's need to make child support payments imposes extreme hardship on a qualifying relative, in this instance, the applicant's current spouse.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 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.