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U.S. Citizenship
and Immigration
Services

HA

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA Date: **SEP 22 2006**

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, Los Angeles, 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 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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife and child.

The district director concluded that there was no evidence in the record to support a finding that the applicant's spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the District Director*, dated February 17, 2005.

On appeal, counsel asserts that the applicant's spouse will experience hardship beyond that normally associated with the separation from one's spouse and financial difficulties. Counsel also states that the applicant's spouse will experience both present and future hardship that will result in extreme impacts to her life. *Counsel's Brief*, dated March 14, 2005.

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 in March 1993. The applicant then departed the United States in December 1998. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 1998, when he last departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his December 1998 departure from the United States. Therefore, the applicant is currently 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences or his child experiences upon removal 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 Bureau 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 spouse would face extreme hardship if she relocates to Mexico in order to remain with the applicant. In his brief, counsel states that in Mexico the applicant's family lives in a rural area where the applicant's brother owns a farm. Counsel states that the applicant will most likely work on his brother's farm and will not be able to earn enough money to support himself and his family. Counsel submits a 2004 State Department Report on Mexico to support his claims. The report states that the poor availability of credit plagues Mexican agriculture and that agricultural loans are now viewed by private banks as too risky. This report does not support a finding that the applicant's spouse will suffer extreme hardship as result of relocating to Mexico. The record does not contain information regarding the specifics of the applicant's brother's farm or if the farm requires agricultural loans. Moreover, the record does not indicate that the applicant and his spouse would not be able to find employment in a different job sector. The applicant's spouse states that she will suffer hardship as a result of watching her daughters struggle with adjusting to life in Mexico. The applicant's two children are 11 and five. The AAO notes that there are inherent hardships in relocating to a different country and adjusting to the language and cultural norms of that country, however the record does not indicate that the applicant's family would not be able to overcome these hardships and that the hardship rises to the level of extreme.

In addition, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States. Counsel asserts that the applicant's spouse will suffer extreme poverty if the applicant is removed from the United States. The applicant's spouse in her affidavit indicates that her net income for one month is

\$2,000 and that the applicant earns \$1,744 per month. She states that her monthly expenses amount to \$1,930 with \$600 going to childcare for her five-year old daughter. No receipts were submitted to support these assertions, however the AAO finds that based on the statements provided by the applicant's spouse, the spouse can support her family on her individual income. The applicant's spouse states that her parents are retired and cannot help with contributing income to her family, but does not state that they could not help with minimizing her child care costs. In addition, the spouse's five-year old daughter will soon be enrolling in school, thereby minimizing her childcare costs. The AAO recognizes that the applicant's spouse will suffer some financial hardship as a result of the applicant's removal, but the record does not indicate that the applicant's spouse cannot overcome these hardships through minor lifestyle adjustments while maintaining her wellbeing. Therefore, the AAO finds that the applicant has not established that his removal will result in extreme hardship to his U.S. citizen 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, 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.