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IN RE:



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:



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 has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that there was no evidence in the record to support a finding that the applicant's spouse would experience any 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, the applicant submits a statement from himself, a statement from his spouse and a statement from his sister explaining how his spouse would suffer extreme hardship if he were removed from the United States.

The AAO notes that counsel indicated, on the Notice of Appeal (I-290B Form), dated March 15, 2005, that she would be sending a brief and/or evidence to the AAO within 30 days. On December 21, 2006, the AAO sent a letter by fax to counsel requesting the brief and/or evidence be sent to the AAO within five days. As of this date, no response has been received. Therefore, the current record will be considered the complete record in reviewing the applicant's waiver application.

The record indicates that the applicant entered the United States without inspection in March or May 1996. The applicant remained in the United States until December 2000. *Applicant's Statement*, at his adjustment interview, dated February 8, 2002. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions of the Act through 2000, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his 2000 departure from the United States and is therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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.

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 and/or parent of the applicant. Hardship the alien himself experiences or his children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's qualifying relative, his spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in reviewing this case.

In support of his application, the applicant has submitted statements from himself, his spouse and his sister, all dated March 11, 2005. The applicant also has provided two articles regarding the economy in Mexico and a checking account statement. The applicant states that he and his spouse both work to provide for their family. He states that it would be extremely difficult for him to be separated from his children if he were removed from the United States. The applicant asserts that he would not be able to support his family in Mexico, because he would not even make enough money to support himself. The applicant submitted articles regarding the Mexican economy. The article from *Newsmax*, dated August 21, 2001 states that as many as 20 percent of all Mexicans are either without jobs or are working only part-time and are unable to get by. Another article from the *Associated Press*, dated December 28, 2001 states that the minimum wage in Mexico is \$4.20-\$4.60 per day. The AAO notes that although these articles project a negative image of the Mexican job market, the applicant did not submit any evidence to establish that he would not be able to find work in his specific field or that he would be unable to earn more than the minimum daily wage of \$4.20-\$4.60.

In addition, applicant's spouse states that she earns approximately \$26,000 per year and her husband earns approximately \$36,000 per year. The applicant's spouse then listed the family's expenses, which total \$3,848 per month. She asserts that if the applicant is forced to leave the United States she would not be able to make it financially on her own. She states that she would have to arrange for a caregiver for her children, which would be an added expense. She also states that calls and visits to Mexico would be too expensive for the family. In support of his spouse's statements regarding finances, the applicant submitted a bank statement, which demonstrates that the applicant's family may suffer financially if the applicant is removed from the United States. However, the applicant's spouse did not show that she would not be able to receive assistance from family members in the United States, which include her mother and father. *Form G-325 of applicant's*

*spouse*. While the AAO acknowledges that the applicant's spouse and their children would experience a reduced standard of living if the applicant is found inadmissible the \$26,000 annual salary earned by the applicant's spouse exceeds the level of income set by the Department of Health and Human Services, (<http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>) for a family of three. Further, as previously noted, the record does not demonstrate that the applicant could not contribute to his family's income from Mexico. The applicant's spouse also expresses her concern for their children and the emotional effects that being separated from their father might have on them. The applicant also asserts that he does not want his family to be separated and that he worries about his children's future if their family is broken apart. The applicant and his spouse failed to provide any details or documentation about the extent of this emotional suffering.

The applicant's sister has also provided a statement in which she relates her experiences in relocating her family to Guadalajara, Mexico. The applicant's sister states that her children suffered physically, emotionally and financially while in Mexico. The AAO recognizes that relocating a family to a foreign country is difficult, however, the record does not establish that the applicant's situation in Mexico will be in any way similar to his sister's situation in Mexico. Moreover, as previously noted, it is not that hardship to the applicant's children that is considered in this proceeding, but that experienced by the applicant's 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 spouse will endure hardship as a result of separation from the applicant. However, based on the record, her situation, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

The applicant has failed to establish that his spouse would experience extreme hardship if he were removed from 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.