U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 03 2009

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated November 14, 2006.

On appeal, the applicant's wife explains that she will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Wife*, dated December 10, 2006.

The record contains a statement from the applicant's wife; a copy of the applicant's wife's naturalization certificate; copies of the applicant's and his children's birth certificates; a copy of the applicant's marriage certificate, and; information regarding the applicant's unlawful presence in the United States. The applicant further provided a document in a foreign language. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, the entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 record reflects that the applicant entered the United States without inspection in or about 2001. He remained until November 2005. Accordingly, the applicant accrued approximately four years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 to a qualifying relative. 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.

On appeal, the applicant's wife explains that she will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Wife*, dated December 10, 2006. The applicant's wife states that she loves the applicant and she wishes to reside with him and their two U.S. citizen children in the United States. *Id.* at 1. She provides that their current separation is devastating to her family's psychological well-being and physical stability. *Id.* She explains that her children will experience hardship that will affect her as well. *Id.*

The applicant's wife asserts that surviving in Mexico is not possible due to limited economic opportunities. *Id.* She contends that they would endure significant financial hardship. *Id.* The applicant's wife states that her children would lack educational opportunities in Mexico. *Id.* She

states that her children do not speak Spanish and they would be considered foreigners in Mexico. *Id.* at 2. She explains that she and the applicant lack strong family ties and friends outside of the United States. *Id.*

The applicant's wife states that she is now residing with her sister due to the applicant's absence. *Id.* at 1. She indicates that the applicant earns $80 per week in Mexico. *Id.* She asserts that childcare services are expensive in the United States, and that she requires the applicant to support her and their two children fully. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant has not shown that his wife will experience extreme hardship should she remain in the United States. The applicant's wife expressed that she will endure emotional hardship if she remains separated from the applicant. However, the applicant has not distinguished his wife's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility. U.S. court decisions have 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 applicant's wife stated that she will suffer economic hardship due to the applicant's absence. The AAO acknowledges that acting as a single parent for two young children involves considerable expense and effort, and that childcare costs can be high. Yet, the applicant has not indicated whether his wife has job skills that she can use to seek employment, or provided an estimate of her prospective income. Nor has the applicant submitted an account of his wife's estimated expenses in the United States. Thus, the applicant has not provided sufficient explanation or evidence to show that his wife would face unusual expenses or financial hardship.

The record contains references to hardships that will be experienced by the applicant's children. Direct hardship to an applicant's children is not a basis for a waiver under Section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's hardship due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The AAO recognizes that the applicant's children will face emotional hardship due to being separated from the applicant. Yet, the applicant has not established that they will suffer consequences that can be distinguished from those ordinarily experienced.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she remain in the United States without him.

The applicant also has not shown that his wife will suffer extreme hardship should she relocate to Mexico to maintain family unity. The applicant's wife stated that she and her children will suffer dire economic circumstances in Mexico. Yet, while the AAO acknowledges that many Mexican nationals choose to work in the United States due to favorable conditions, the applicant has not shown that his wife would face economic challenges in Mexico that rise to the level of extreme hardship. As discussed above, the applicant has not stated his wife's job skills or employment prospects. The applicant has not provided an account of his expenses in Mexico, or those that his family would likely incur should they reside there. Thus, the AAO lacks adequate documentation to determine the financial challenges his wife would have should she reside in Mexico.

The applicant's wife noted that she and the applicant do not have close family or friends in Mexico. However, the applicant has not identified what family members he or his wife have in the United States, thus he has not shown that relocating to Mexico would result in a change in their regular contact with other individuals. The applicant's wife expressed that she and their children are experiencing emotional consequences due to separation from the applicant. Yet, if the applicant's wife and children relocate to Mexico, they will not suffer the effects of family separation. It is noted that the applicant's wife is a native of Mexico, thus it is assumed she would not face the challenges of adapting to an unfamiliar language or culture should she relocate there. The applicant has not shown that his children, ages six and eight, would face unusual challenges in adapting to life in Mexico that would cause significant emotional hardship for his wife.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she join him in Mexico. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 regarding a 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.