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

U.S. Citizenship and Immigration Services

H2

[redacted]

DEC 07 2009

FILE: [redacted] Office: MEXICO CITY, MEXICO Date:
(CDJ 2004 688 059) (CIUDAD JUAREZ)

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.

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, Mexico. 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 under section 212(a)(9)(B)(i)(II) of 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 ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated February 16, 2007.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*; *Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, medical statements for the applicant's spouse and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering 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.

In the present case, the record indicates that the applicant entered the United States without inspection in April 1998 and voluntarily departed in December 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated January 6, 2006. The applicant, therefore, accrued unlawful presence from April 1998 until he departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 2005 departure from the United States. 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 more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his child would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 family ties to 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.

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

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A, Biographic Information sheet, for the applicant.* She notes that her entire family is in the United States, she has never lived in Mexico, and it would take her some time to adjust. *Statement from the applicant's spouse*, dated December 8, 2005.

The applicant's spouse states that she had spina bifida. *Id.* The record establishes that the applicant's spouse was born with a lumbosacral lipoma and had tethered spinal cord surgery in 1995. *Medical statement from* [redacted] *for* [redacted], dated June 30, 1983; *Medical statement from* [redacted]., dated September 20, 1995. She has had significant leg weakness and a neurogenic bladder for which she has consistently required a catheter. *Medical statement from* [redacted], dated September 20, 1995; *Statement from* [redacted]., dated November 16, 2000; *and statement from* [redacted] dated February 28, 2002. The applicant's spouse states that if she moved to Mexico, she would lose her medical benefits. *Statement from the applicant's spouse*, dated December 8, 2005. While the AAO notes this claim, it does not find the record to establish through documentary evidence that the applicant has health insurance. Going on record without supporting documentary evidence will not satisfy the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO observes that the applicant's spouse has been treated from the time she was six weeks old in 1983 through 2002 by the same physician for her health condition and that a move to Mexico would disrupt this established medical relationship. However, the record fails to document how this disruption would affect the applicant's spouse's health. Further, it does not address the current status of the applicant's spouse's condition; what type of treatment she requires; or how her condition affects her ability to function independently, to work or to care for her child. The AAO also notes that the record does not document, through published country conditions reports, that the applicant's spouse would be unable to receive adequate medical treatment for her condition in Mexico.

The applicant's spouse notes that if she moved to Mexico, she would not have a job. *Statement from the applicant's spouse*, dated December 8, 2005. Again, the record fails to include documentation, such as published country conditions reports, regarding the economy in Mexico and the lack of employment opportunities available to the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record also does not address the language abilities, or lack thereof, of the applicant's spouse and whether that would affect her ability to adjust to Mexico. The applicant's spouse states that she wants her child to have the best educational opportunities, and that those opportunities are better in the United States than in Mexico. *Statement from the applicant's spouse*, dated December 8, 2005. While the AAO acknowledges this statement, it notes that the applicant's child is not a qualifying relative for the purposes of this case and that the record fails to document how any hardship the applicant's child might encounter in Mexico would affect the applicant's spouse, the only qualifying relative. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States and her entire family lives in the United States. *Birth certificate*; *Statement from the applicant's spouse*, dated December 8, 2005. As previously noted, the applicant's spouse was born with a lumbosacral lipoma and had tethered spinal cord surgery in 1995. *Medical statement from* [redacted] *for* [redacted]., dated June 30, 1983; *Medical statement from* [redacted], dated September 20, 1995. She has had significant leg weakness and a neurogenic bladder for which she has

consistently required a catheter. *Medical statement from* [redacted], dated September 20, 1995; *Medical* statement *from* [redacted] dated November 16, 2000; *Medical statement from* [redacted], dated February 28, 2002. The applicant's spouse states that due to her health condition, she was unable to drive for long periods of time and the applicant would take her to places she needed to go. *Statement from the applicant's spouse*, dated December 8, 2005. The AAO notes that the record does not document what type of assistance the applicant's spouse requires in her daily life and also does not address whether any of the applicant's spouse's family members in the United States would be able to provide whatever assistance she might require. It also finds, as previously noted, that the record fails to document any of the impacts that the applicant's spouse's medical condition may have on her daily activities.

The applicant's spouse states that, if the applicant's waiver application is denied, she would have to look for a cheaper place to live, as she would not be able to maintain her current home without his help. *Id.* While the AAO acknowledges this claim, it notes that the record does not include any documentation, such as letters of employment for the applicant's spouse, her tax returns or W-2 forms, rent/mortgage statements, credit card statements, or proof of household expenses, that would establish her financial situation. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, there is no documentation in the record to show that the applicant would be unable to obtain employment and contribute to his family's financial well-being from a location other than the United States.

The applicant's spouse states that being separated from the applicant would affect her emotionally, as they have not been apart since their marriage. *Statement from the applicant's spouse*, dated December 8, 2005. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, when all the hardship factors are considered in the aggregate, the AAO does not find the record to distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.