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

U.S. Citizenship and Immigration Services

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FILE: [redacted] (CDJ 2004 865 772) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: NOV 0 4 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, 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 her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their U.S. citizen child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated November 14, 2006.

On appeal, the applicant asserts that all of the hardships being endured by the qualifying relative should be considered. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO).*

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's spouse; a medical letter for the applicant's spouse; and work production summaries for 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 1993 and voluntarily departed in December 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated December 13, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 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 her child would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she 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 he resides in Mexico or the United States, as he 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 the adjudication of this case.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Ecuador. *Naturalization certificate.* He has never lived in Mexico and knows nothing about the Mexican system. *Declaration from the applicant's spouse submitted with the Form I-601*, undated. The applicant's

spouse notes that he could not move to Mexico because of the lack of safety and services available, and the culture. *Statement from the applicant's spouse submitted on appeal*, undated. He does not want to live in fear for his or his family's safety in Mexico. *Id.* While the AAO acknowledges these statements, it notes that the record does not include documentation, such as published country conditions reports, regarding safety issues and the availability of services in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of 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 applicant's spouse states that Mexico is not the environment in which he wants his daughter to live. *Statement from the applicant's spouse submitted on appeal*, undated. He notes that he wants his daughter to derive all the benefits she is entitled to in the United States. *Id.* While the AAO acknowledges these statements, it notes that the applicant's child is not a qualifying relative for the purposes of this case and the record fails to document how any hardship the applicant's child might encounter would affect her father, the only qualifying relative. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Ecuador. *Naturalization certificate*. He notes that not knowing when his family will be together again has brought undue emotional stress and pressure upon him. *Statement from the applicant's spouse submitted on appeal*, undated. He feels emotionally drained and is constantly thinking about the outcome of his situation. *Id.* The applicant's spouse also states that he is experiencing acid indigestion, abdominal bloating and a hyperactive intestinal tract and has sought medical attention. *Id.* The applicant's spouse's physician notes that he is in generally good health except for major depression related to his separation from the applicant. *Statement from* [redacted] dated December 8, 2006. As a result, the applicant's spouse's physician has placed him on antidepressant medication. *Id.* While the AAO notes that the applicant's spouse's physician has determined he is suffering from major depression, it does not find the physician's statement to be sufficiently probative to establish that the applicant's spouse is experiencing extreme emotional hardship. The statement is unsupported by a psychological evaluation or the type of analysis normally provided in a psychological evaluation that details the symptoms of the applicant's spouse and sets forth the process through which the applicant's spouse's physician arrived at his mental health diagnosis.

The applicant's spouse notes that he works in an environment that demands his undivided attention. *Statement from the applicant's spouse submitted on appeal*, undated. He states that he has become prone to making mistakes and that it has become increasingly difficult to pay 100 percent attention to what he is doing. *Statement from the applicant's spouse on appeal*, undated. His work production summaries show that in October 2005 the applicant's spouse had an average production percentage of 103.28 percent, while in July 2006 that percentage had dropped to 83.78 percent. *CMS Production Summaries*. While the AAO acknowledges this decrease in the applicant's spouse's performance, as documented in the record, it notes that the record does not include any documentation, e.g., statements from the applicant's spouse's employer, that ties his decreased job

performance to his separation from the applicant. The record does not include any documentation showing his reduced production levels have resulted in a decrease in pay or that he is at risk of losing his job.

The applicant's spouse notes that he has had to take two part-time jobs to be able to support two households, one in the United States and one in Mexico. *Id.* The record, however, fails to include documentary evidence, e.g., money transfers sent to the applicant and the applicant's spouse's own monthly financial obligations, in support of the applicant's spouse's claim that he is experiencing financial hardship. Going on record without supporting documentary evidence will not meet the burden of proof of 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 nothing in the record to show that the applicant would be unable to obtain employment and contribute to her spouse's financial well-being from a place other than the United States.

The applicant's spouse states that he needs the applicant in the United States because she and their daughter are his family and the ones that he loves the most. *Declaration from the applicant's spouse submitted with the Form I-601*, undated. 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 his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. 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 her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.