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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: SEP 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).

John F. Grissom
Acting 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 record reflects that 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 ten 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.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 3, dated June 26, 2006.

On appeal, the applicant states that the case was not complete, the district director did not have all of the facts, and that necessary documentation will be submitted. *Form I-290B*, dated July 25, 2006.

The record includes, but is not limited to, the applicant's spouse's statements and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal

The record reflects that the applicant entered the United States without inspection in or around December 1989 and departed the United States in or around November 2005. The applicant accrued unlawful presence from December 15, 2000, the date of his 18th birthday, until the time he departed the United States in or around November 2005. The applicant is 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 and seeking readmission within ten years of his departure.

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 or parent of the applicant. Hardship to the applicant or any children he may have is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. The applicant's spouse states that the applicant has no family in Mexico, he has no life in Mexico, employment is difficult to find in Mexico and they have two children. *Applicant's Spouse's First Statement*, at 1, dated December 8, 2005. The record does include documentary evidence of country conditions in Mexico or that the applicant and his spouse would be unable to find employment there. The record does not include birth certificates to establish that the applicant and his spouse are the parents of two children. Going on record without supporting documentation will not meet the applicant's 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 applicant's spouse does not address or provide evidence of how the financial issues discussed below would affect her if she resided in Mexico, whether her children would experience hardship in Mexico and how this would affect her, or any other types of hardship she would encounter in Mexico. The AAO finds that the record does

not include sufficient evidence that the applicant's spouse would experience extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that the applicant's presence in the United States was her support, he assisted her with her restaurant, she is lost without him, her children will be lost and misguided without his discipline and moral support, her children are becoming harder to raise without him, and documentation has been provided to substantiate their hardships. *Applicant's Spouse's Second Statement*, dated August 29, 2006. The applicant's spouse states that she cannot run her business and support her two children on her own, she cannot afford to hire anyone, she is barely making ends meet, she cannot get out of her lease, she cannot provide for the children alone, she will have to find another job and this means she will be away from her children more, her children are three and eight in age, her children cry at night, her daughter is acting up in school, and she and the applicant were building a home which is only halfway done as the applicant was managing and supervising the project. *Applicant's Spouse's First Statement*, at 1-2.

The record reflects that the applicant's spouse's restaurant has been cited for $24,750 due to violations and there is a balance of $14,050 due. *Case Information for the Applicant's Spouse's Restaurant*, dated May 12 and 20, 2004. The record includes a notice of levy in the amount of $3,644.80 against the applicant's spouse. *Notice of Levy*, dated May 31, 2006. The record indicates that this levy may have been cleared as a submitted bank statement indicates that the applicant's spouse paid off the $3,644.80 that she owed. *Bank of America Statement*, dated June 15, 2006. The record includes balances of $8789.71 and $937.12 for the applicant's spouse's business, but it is not clear what they are related to. *Global Customer Relationship Printout*, dated September 1, 2006. The record includes evidence that the applicant's spouse is being sued in relation to foreclosure of a mechanic's lien against realty for labor, services, equipment and/or materials furnished involved in the work of improvement services on the realty. *Notice of Pending Action*, at 2, dated July 24, 2006. However, it is not clear how much money she is being sued for. The record reflects that the applicant's spouse is listed on a 2005 defaulted property tax statement in the amount of $3,300.70, but it is not clear if she is the one responsible for the bill. *County of San Diego Records*, dated August 28, 2006. Due to the unclear nature of the documents presented, the AAO cannot determine the applicant's spouse's financial situation or that the applicant's presence is required to alleviate her financial difficulties. The record does not include evidence of the applicant's or his spouse's income or other financial assets. The record does not include sufficient evidence to establish that the applicant's children would experience hardship without the applicant and how this would affect the applicant's spouse, or of any other types of hardship she would experience without the applicant. The AAO finds that the record does not include sufficient evidence that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

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.

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.