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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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SEP 17 2009

FILE:

(CDJ 2004 799 367)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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.

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 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 her last departure from the United States. The applicant's spouse is a U.S. citizen and she 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 5, 2006.

On appeal, the applicant's representative submits additional documentation of extreme hardship to the applicant's spouse for consideration. *Brief in Support of Appeal*, at 1, dated June 27, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, statements from the applicant's spouse's friend and family members, photographs, documents from the applicant's spouse's military service and community involvement, and financial documents for the applicant's spouse. 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 September 1999 and departed the United States in or around November 2005. The applicant accrued unlawful presence during this entire period of time. 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 her last departure from the United States.

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 is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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. These factors include the presence of 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.

The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Mexico or in the United States, as the qualifying relative 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 a qualifying relative in the event of relocation to Mexico. This prong of the waiver analysis is not addressed. There is no evidence of emotional, financial, medical or any other type of hardship should the applicant's spouse reside in Mexico. As such, the AAO finds that the record does not establish that the applicant's spouse would suffer extreme hardship if he relocated to Mexico permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that life has lost much of its meaning and enjoyment; he did not realize the great personal and emotional injury he would suffer from the applicant's absence; he built his life around his wife; he quit the Army so that he could spend more time with her; he does not want to come home in the evening; he hates weekends because he is alone; he is afraid he will lose his home; his monthly expenses are \$2400, which is almost his whole income; he feels deeply depressed and hopeless; there have been weeks

where he could hardly sleep; he has started drinking to escape from his situation; he does not want to eat and has lost 40 pounds; he postponed taking his sick dog to the vet because he was tired and sad and his dog died; he now has to go home to an empty house; he cannot afford to take time off from work and has visited his spouse only once; sometimes he does not want to talk with her as he cannot stand talking about her immigration problems; his faith in God has been shaken and it is becoming harder and harder to carry on his daily life. *Applicant's Spouse's Statement*, at 1-2, dated June 27, 2006. The applicant's spouse's mother states that her son has been depressed, he has lost weight, he does not eat, he does not want to go to any family gatherings, he locks himself up in an empty house, and he used to visit her with the applicant and go out with the applicant. *Applicant's Spouse's Mother's Statement*, dated June 28, 2006. The record includes several other similar statements from the applicant's spouse's friend and family members. The AAO notes the claims made by the applicant's spouse concerning the impact that his separation from the applicant has had on his emotional and physical health, as well as his financial concerns. However, the record does not contain sufficient documentary evidence of emotional, financial, medical or any other type of hardship to establish that he would experience extreme hardship upon remaining 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 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.