U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H3

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: JUN 10 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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 determined 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. The applicant married a lawful permanent resident of the United States on July 12, 1985. The applicant's spouse became a naturalized citizen of the United States on August 24, 2000. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated February 13, 2004.

On appeal, counsel states that the applicant disagrees with Citizenship and Immigration Services (CIS) regarding her inability to demonstrate extreme hardship and that the decision of the district director failed to address the fact that the applicant departed from the United States utilizing advance parole authorization. Counsel further asserts that CIS did not adequately address the heightened hardship that the applicant's spouse would experience as a result of caring for their daughter who is experiencing significant health problems. *Form I-290B*, dated March 4, 2004.

In support of these assertions, counsel submits a brief, dated April 14, 2004; an affidavit of the applicant's spouse, dated April 12, 2004; country condition reports for Mexico and a letter from a Mexican physician with English translation. The entire record was reviewed and considered in rendering a decision.

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 application, the record indicates that the applicant entered the United States with a border crossing card in 1995 with authorization to remain in the United States for three days. On October 6, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). Subsequently, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States on October 26, 2000.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 6, 2000, the date of her proper filing of the second Form I-485 application. 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 one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure.

The AAO acknowledges counsel's assertion that the applicant departed from the United States pursuant to an authorized notice of advance parole. *Form I-290B.* The AAO notes however that counsel offers no evidence and refers to no precedent establishing that such a departure does not qualify as a departure under section 212(a)(9)(B)(i)(II) of the Act.

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 alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

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 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.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to Mexico in order to remain with the applicant. *Brief*, dated April 14, 2004. Counsel states that the applicant's spouse has more relatives in the United States than he does in Mexico. *Id.* at 2. Counsel asserts that country conditions in Mexico are difficult economically and that the applicant's spouse would be unable to earn the income that he does in the United States. *Id.* Counsel indicates that the younger of the couple's two children could not obtain adequate medical care in Mexico for the complications that she suffers owing to her birth as a premature baby. *Id.* at 3; *see also Letter from* [redacted] *and English Translation.*

Counsel fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in order to maintain his employment and access to medical care for his daughter. The AAO acknowledges counsel's assertion that the applicant's spouse would suffer hardship as a result of performing his responsibilities as the provider for his family while caring for his daughter. *Brief* at 3. The AAO notes, however, that the record fails to establish that the medical needs of the applicant's child extend beyond treatment as a premature baby. *See Letter from* [redacted] dated August 29, 2003 ("This baby needs some follow up by a pediatrician to prevent further complications."); *see also Letter from* [redacted] dated August 25, 2003 ("I plan to follow Aglae until she is at least 14 months old."). Moreover, the record reflects that the applicant's other child, a son, has now obtained the age of majority; the record fails to establish that the applicant's son is unable to assist his father in maintaining the financial status of the family and in caring for his younger sister.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.