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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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[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: APR 13 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant requested 90 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed December 22, 2006. The record contains no evidence that a brief or additional evidence was filed within 90-days; therefore, the record is considered complete.

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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his United States citizen wife and daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 21, 2006.

On appeal, the applicant states his wife and family will suffer extreme hardship if he is barred from returning to the United States for 10 years. *Form I-290B, supra.*

The record includes, but is not limited to, letters and affidavits from the applicant and his wife; and a letter from [redacted] regarding the applicant's rehabilitation. The entire record was reviewed and considered in arriving at 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-
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> . . . .
>
> (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.
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> . . . .
>
> (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 [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 initially entered the United States in October 1994 without inspection. On an unknown date, the applicant departed the United States. In February 1996, the applicant reentered the United States without inspection. On August 23, 1996, the applicant was arrested for theft and burglary by the Sedona, Arizona police. In January 2000, the applicant departed the United States. On February 19, 2001, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until August 18, 2001. On November 20, 2002, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On October 12, 2005, the applicant's Form I-130 was approved. On January 31, 2006, the applicant filed a Form I-601. On November 21, 2006, the District Director denied the applicant's Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse.

The AAO notes that although the applicant has asserted that he was outside the United States from 1997 to 2000, on a Biographic Information sheet (Form G-325A) signed by the applicant on August 30, 2002, he listed addresses and employment in Arizona for this period of time. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until January 2000, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his January 2000 departure from the United States. The AAO notes that the applicant has not disputed that he was unlawfully present in the United States for at least one year or that he is inadmissible under section 212(a)(9)(B)(II) of the Act. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Additionally, the AAO notes that the record reflects that the applicant was arrested of theft and burglary on August 23, 1996, and appears to have been convicted of burglary. The AAO notes that based the applicant's burglary conviction, he may also be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. However, as this issue was not addressed by the District Director and a record of conviction is not included in the record, the AAO will adjudicate the applicant's waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has

established extreme hardship to a qualifying relative. The 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.

The applicant's wife states she cannot live separated from her husband. *See letter from J* [redacted] undated. The applicant states he and his wife have "jobs which offer [them] great benefits." *Affidavit from the applicant*, dated January 26, 2006. The AAO notes that the applicant submitted a letter from his wife stating she was resigning from her position to be a stay-at-home mom. *See letter from* [redacted], dated April 17, 2006. The applicant states his wife is studying to become a medical billing specialist. *See affidavit from the applicant, supra.* The AAO notes that the applicant has not established that his wife cannot continue her education in Mexico, or that she has no transferable skills that would aid her in obtaining a job in Mexico. Additionally, the AAO notes that the applicant's wife's family is originally from Mexico, and it has not been established that she has no family ties in Mexico. *See letter from J* [redacted] dated January 16, 2006. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant submitted documentation establishing that he and his wife own their own home and additional properties that they are paying mortgages on; however, it has not been established that the applicant is unable to obtain employment, and that he is unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.