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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: APR 13 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:

[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.

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, 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, Mexico City (Cuidad Juarez), 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 10 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 failed to establish that a qualifying relative would suffer extreme hardship as a result of his continued inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated June 7, 2006.

On appeal, the applicant's spouse states that the experience of being separated from her spouse has been a financial and emotional hardship for her and her family. *Spouse's Letter*, dated June 28, 2006. She also states that she has made the decision to relocate to Mexico to be with the applicant and will have to leave her son in the United States as his biological father will not allow for him to move out of the country. *Id.*

In the present application, the record indicates that the applicant entered the United States without inspection in 1995. The applicant remained in the United States until August 24, 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted under the Act, until August 24, 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his August 24, 2005 departure from the United States. Therefore, the applicant is 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.

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.

. . . .

> (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 and/or parent of the applicant. Hardship the applicant or his child experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico and in the event that she resides 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 AAO will consider the relevant factors in adjudication of this case.

As stated above, the applicant's spouse states in her letter dated June 28, 2006 that she has made the decision to relocate to Mexico to be with her spouse and that she will have to leave her son in the United States because of the joint custody she shares with her son's biological father. *Spouse's Letter*, dated June 28, 2006. She states that her relocation will lead to her son living an unstable life. *Id.* In support of these assertions the applicant's spouse submits a letter from her father who confirms that she made the decision to move to Mexico on June 23, 2006 to be reunited with the applicant. *Father's Letter*, undated. He states that the applicant's spouse was born in Texas and visited Mexico once or twice a year. He states that moving to Mexico will impact her deeply because she will have to start her life over again and learn a system and customs that she is not familiar with. He also states that his grandson will be affected by growing up without his mother. *Id.* The applicant's spouse's employer states in a letter dated June 29, 2006, that the applicant's spouse gave her resignation date as of June 23, 2006 because she has decided to relocate to Mexico to be with the applicant.

The record also contains a copy of the Child Support Review Order in regards to the applicant's spouse's son, which was submitted on appeal. The Order is dated March 1, 2001 and states that the applicant's spouse and her son's biological father are appointed joint managing conservators and that the applicant's spouse may determine the child's primary residence, but must maintain this residence in Dallas County or any other contiguous county. The AAO notes that in an affidavit submitted with the initial waiver application the applicant's spouse states that her son's biological father left her son a year after his birth, has been an absent parent since this time, her family has been her son's sole support for everything, and that until she met the applicant in November 2001, her son had no father figure in his life. The applicant states in an affidavit dated August 3, 2005 that he is an active part of his step-son's life.

The AAO finds that although the applicant's spouse states that separation from the applicant has caused her emotional and financial hardship, she does not provide any details or documentation regarding this hardship and how it rises to the level of extreme hardship. Furthermore, the applicant's spouse's claims regarding her relocation to Mexico being a hardship revolve primarily around having to leave her son behind in the United States. The AAO finds that the record is not sufficient in showing that the applicant's spouse cannot relocate her son to Mexico. The AAO recognizes that the Child Support Review Order states that the applicant's spouse cannot move her son's primary residence out of Dallas County or any other contiguous county; however, this order is dated March 2001 and according to the applicant's spouse her son's biological father has not been a part of his life since a year after his birth. The AAO notes that the applicant's spouse's son was born in 1999, so his biological father has not been part of his life since 2000, and the record does not indicate that the applicant's spouse has exhausted all remedies (i.e.: has attempted to have the Child Support Order amended by the court given her current circumstances) enabling her to bring her son to Mexico. Thus, the AAO cannot find that relocation to Mexico would cause the applicant's spouse extreme hardship.

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.