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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAY 0 4 2009

(CDJ 2002 749 454)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated June 6, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Counsel on Form I-290B*, dated July 2, 2006. Counsel contends that U.S. Citizenship and Immigration Services (USCIS) has approved applications for waivers of inadmissibility based on less hardship than that which would be endured by the applicant's wife. *Id.* at 1.

The record contains a statement from counsel on Form I-290B; copies of affidavits from unrelated matters, purported to be applications for waivers of inadmissibility; statements from the applicant's wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage license; a copy of the birth certificate for the applicant's son, and; documentation regarding the refusal of the applicant's immigrant visa, including a finding that he resided unlawfully in the United States for more than one year. The entire record was reviewed and considered in rendering 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-
> >
> > (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 matter, the record reflects that the applicant entered the United States without inspection in January 1999 and remained until he voluntarily departed in June 2005. Thus, the applicant accrued over six years of unlawful presence in the United States. The applicant now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Counsel on Form I-290B*, dated July 2, 2006. Counsel contends that U.S. Citizenship and Immigration Services (USCIS) has approved applications for waivers of inadmissibility based on less hardship than that which would be endured by the applicant's wife. *Id.* at 1. To support this assertion, counsel references two affidavits entered into the record, purported to be affidavits from spouses of applicants for waivers of inadmissibility. Counsel asserts that the affidavits show that extreme hardship can be established based of facts less severe than those in the present case.

The applicant's wife stated that she and the applicant's son are experiencing emotional hardship due to separation from the applicant. *Statement from the Applicant's Wife*, dated December 27, 2005. She explained that the applicant's three-year-old son asks for him and shows anger toward her due to the applicant's absence. *Id.* at 1. She stated that she speaks to the applicant on the phone frequently, but that she is unable to afford the cost of speaking daily. *Id.* She indicated that she wishes for the applicant to rejoin her in the United States. *Id.* at 1-2.

The applicant's wife stated that she needs the applicant's assistance with meeting her financial needs such as paying for their housing and bills. *Prior Statement from the Applicant's Wife*, undated.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife expressed that she will experience emotional hardship if the applicant is prohibited from entering the United States. Yet, the applicant has not distinguished his wife's emotional hardship from that which is commonly experienced when spouses are separated due to inadmissibility. While the AAO acknowledges that family separation can be emotionally difficult, the applicant's wife has not described circumstances that show that she is suffering unusual emotional consequences.

U.S. court decisions have 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.

The applicant's wife suggested that she will experience economic consequences should the applicant be prohibited from entering the United States. Yet, the applicant has not presented any documentation to show whether his wife works, and if so, her level of compensation. Nor has the applicant provided evidence of his wife's economic needs. Thus, the AAO lacks sufficient documentation to determine the economic impact the applicant's absence will have on his wife.

The applicant's wife stated that the applicant's child is experiencing emotional hardship due to separation from the applicant. Direct hardship to an applicant or an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. However, in the present matter the applicant has not provided sufficient explanation or documentation to show that hardship to his son is elevating his wife's hardship to extreme hardship.

Counsel references two affidavits entered into the record, purported to be affidavits from spouses of applicants for waivers of inadmissibility. Counsel asserts that the affidavits show that extreme hardship can be established based of facts less severe than those in the present case. However, it is first noted that applications for waivers are adjudicated on a case-by-case basis, and all hardships to a qualifying relative must be considered in aggregate. Though the submitted affidavits may have been included with Form I-601 waiver applications which were approved by USCIS, they do not afford an understanding of the totality of the evidence in the referenced matters. The AAO is unable to determine whether other instances of hardship were under consideration, or whether the applicants had other qualifying relatives whose hardship may have served as a basis for approval. Further, the affidavits do not reflect that they were submitted in support of Form I-601 waiver applications, thus counsel's contention that they represent a level of hardship that qualifies as extreme hardship under section 212(a)(9)(B)(v) of the Act is not supported. Finally, unpublished USCIS decisions are not binding on subsequent decisions. As counsel has not provided or cited the decisions to which he refers, he has not shown that the reasoning in those proceedings is binding on the present matter.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should he be prohibited from entering the United States and she remain.

The applicant has not asserted or shown that his wife would experience extreme hardship should she relocate to Mexico to maintain family unity. Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) of the Act. 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.