U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. A3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: AUG 09 2006

IN RE: [redacted]

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of Mexico who was found to be inadmissible to the United States (U.S.) 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 reflects that the applicant is the spouse of a U.S. citizen. The applicant initially entered the United States as a B-2 visitor for pleasure in 1989. He subsequently departed and reentered the U.S. with advance parole authorization on December 21, 2002. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative, his wife, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated June 4, 2003.

On appeal, the applicant asserts that his spouse, [redacted], has shown that she will suffer extreme hardship if her husband is not permitted to reside with her in the United States. *Form I-290B*, dated June 26, 2003; *Brief in Support of Appeal,* dated June 21, 2003.

In addition to the above mentioned brief, the record includes Affidavit of Extreme Hardship, in which she describes how her life would be affected if her husband were denied permission to reside in the United States with her; (2) several documents relating t[redacted] admission to Stanford Law School, including financial aid documents; (3) a 2001 joint federal tax return; and (4) several employment verification letters. The AAO reviewed the record in its entirety before reaching its 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 on a visitor visa on or about September 22, 1989. On August 10, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 11, 2002, the district director issued the applicant Authorization for Parole of an Alien into the United States (Form I-512). The applicant subsequently used the advance parole authorization to depart and reenter the United States. The AAO notes that the applicant overstayed the period of stay authorized by his visitor visa by remaining in the United States for over 12 years, but did not begin accruing unlawful presence under 212(a)(9)(B) until he turned 18 years old on May 23, 1999. See 212(a)(9)(B)(iii)(I).

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General as an authorized 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* [redacted] *Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from May 23, 1999, the date he turned 18, until August 10, 2001, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his December 2002 departure from the United States. 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.

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 that the alien himself experiences if CIS refuses the applicant admission is not taken into consideration under section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Attorney General 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 (BIA) 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.

The applicant asserts that his spouse would face extreme hardship if he is refused admission to the United States. The applicant indicates that as a United States citizen, the applicant's spouse cannot leave the United

States and move to Mexico. *Spouse's Affidavit of Extreme Hardship.* The applicant further contends that his wife would not be able to afford law school without his U.S. wages and would not be able to bear the stress of her first year of law school without his presence and emotional support. *Brief in support of appeal.*

The applicant does not establish extreme hardship to the applicant's spouse if she remains in the United States to attend law school. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant states that his spouse would experience economic hardship as a result of separation from him. *Id.* The record reflects that both the applicant and his spouse are students and earned a combined income of less than $11,000. *2001 Joint Tax Return for* [redacted] Although the applicant submits evidence of his spouse's college debt, the record fails to establish what his annual income is or how much he would contribute to her current or future debt or that his spouse will be unable to address these financial responsibilities herself, through employment or financial assistance. Further, beyond generalized assertions regarding country conditions in the Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial well-being from a location outside of the United States. *Brief in Support of Appeal* ("It is a matter of public notice...that wages in Mexico are much lower than in the United States.") Moreover, the U.S. 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).

The applicant's spouse asserts that, if she accompanied her husband to Mexico, she would lose the opportunity to go to law school, be unable to pay off her existing college loans, and be separated from her family in the United States. *Spouse's Affidavit of Extreme Hardship.* She does not, however, submit documentation to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, does not go beyond what individuals separated as a result of deportation or inadmissibility typically go through and does not rise to the level of extreme hardship.

The applicant cites to *Matter of Recinas,* (23 I & N dec. 467 (BIA 2002), a Board of Immigration Appeals (BIA) case where the BIA found the respondent would suffer exceptional and extremely unusual hardship if

she were deported to her native Mexico. The facts in *Recinas*, however, are distinguishable from the facts in the present case. The factors the BIA considered most noteworthy in *Recinas* were the applicant's six children, four of whom were U.S. citizens, and the fact that the respondent was the sole family breadwinner. The applicant in this case has no children and has submitted no evidence to show that he financially supports his U.S. citizen wife. The applicant in *Recinas* established that her parents were both legal permanent residents (LPR) in the United States, that her five siblings were U.S. citizens, and that she had no immediate family ties in Mexico. The applicant in this case has submitted no documentation to establish either his lack of family ties in Mexico or the existence of family ties in the United States.

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.