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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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FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:

(CDJ 1998 586 233)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad 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 under section 212(a)(9)(B)(i)(II) of 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 ten years of her last departure from the United States. The applicant is married to a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge,* dated February 9, 2007.

On appeal, counsel for the applicant states that the applicant's spouse would suffer extreme hardship. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO); Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; Form W-2s for the applicant's spouse; a school withdrawal notice for one of the applicant's children; grade reports for the applicant's children; a home equity affidavit and agreement, and lender's statement; loan statements; a media article on home foreclosures; car loan payment statements; and credit card statements. 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 case, the record indicates that the applicant was admitted to the United States with a tourist visa in 2000 and remained until December 2005. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated March 17, 2006. Counsel contends that the applicant did not accrue unlawful presence in the United States, but repeatedly entered the United States on tourist visas valid for six months and returned to Mexico at the end of each six month period before reentering the United States for another six month period. The AAO notes that counsel's description of the applicant's stay in the United States is not consistent with the applicant's testimony to the Department of State consular officer who conducted her immigrant visa interview. Moreover, the AAO notes that the applicant by using a nonimmigrant visa to return to her place of residence in the United States is also inadmissible under section 212(a)(6)(C)(i) of the Act for having obtained admission to the United States through fraud or the willful misrepresentation of a material fact. [1]

Based on her statement to the consular officer, the applicant accrued unlawful presence from the day after her tourist visa expired in 2000 until she departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her December 2005 departure from the United States. 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 more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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

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[1] A section 212(a)(6)(C)(i) inadmissibility may be waived under section 212(i) of the Act. As the requirements for waiver eligibility under section 212(i) of the Act are the same as those under section 212(a)(9)(B)(v), a waiver of the applicant's inadmissibility for her unlawful presence will also serve to waive her inadmissibility for having obtained admission to the United States through fraud or willful misrepresentation.

hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside 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.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Applicant's spouse's Permanent Resident Card.* The applicant's spouse has lived in the United States for over 27 years. *Statement from the applicant's spouse*, dated April 10, 2007. While he states that he has many family members in the United States, the record does not address whether he has any family members in Mexico. *Id.* The applicant's spouse notes that he has been working for the same company since 1980 and earns approximately $27,000.00 in his job. *Id.; W-2 forms for the applicant's spouse.* He asserts that even if he were able to find employment in Mexico, he would only earn a fraction of his current salary. *Statement from the applicant's spouse*, dated April 10, 2007. He would be unable to provide for his family on the wages he would earn in Mexico and he and his family would live in poverty. *Id.* He further notes that, at his age, it would be hard to find any kind of work and that it would be especially difficult because he does not have much education and could only perform landscaping work, which does not pay very much in Mexico. *Id.* He would be forced to sell his home in the United States, as he would be unable to make the monthly payments. *Id.*

While the AAO acknowledges these assertions, it notes that the record fails to include documentation, such as published country conditions reports, regarding the economic situation and availability of employment in Mexico. There is no documentation in the record regarding age discrimination in hiring practices in Mexico, nor does the record include information about the salaries of landscapers in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Applicant's spouse's Permanent Resident Card.* The applicant's spouse has lived in the United States for over 27 years and has many family members in the United States. *Statement from the applicant's spouse*, dated April 10, 2007. The applicant's spouse notes that he does not have a lot of savings and cannot continue to afford to live in the United States while sending money to Mexico to support his family. *Statement from the applicant's spouse*, dated April 10, 2007. He has many debts from trying to maintain two households and is thus forced to work extra hours. *Id.* He is concerned that his health will fail if he continues to work so hard and asserts that he needs the applicant in the United States to help him with the financial burdens. *Id.* The record includes various bill statements showing the expenses of the applicant's spouse. *See loan statements; car payment statements; and credit card statements.* While the AAO acknowledges the documented expenses of the applicant's spouse, it notes that there is nothing in the record that establishes that the applicant's spouse is supporting the applicant in Mexico. Furthermore, the record fails to include documentation, such as published country conditions reports on the economic situation and availability of employment in Mexico, to show that the applicant would be unable to obtain employment in Mexico and, thereby, reduce the financial burden on her spouse.

The applicant's spouse states he wishes to be reunited with his family and to stop suffering from not seeing them. *Statement from the applicant's spouse*, dated April 10, 2007. Counsel asserts that being separated from the applicant has taken a toll on the applicant's spouse. *Attorney's brief.* The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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.