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

U.S. Citizenship
and Immigration
Services

#2

AUG 11 2009

[Redacted]

FILE:

(CDJ 2000 632 889)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 ten years of his last departure from the United States. The applicant is the son of a lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his father.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated June 30, 2006.

On appeal, the applicant's father contends that this entire situation has had an emotional and financial effect on him. *Statement from the applicant's father*, dated July 9, 2006.

In support of these assertions the record includes, but is not limited to, a statement from the applicant's father. 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 entered the United States without inspection in February 2004 and left the United States on April 1, 2005 under an order of voluntary departure. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 21, 2005. The applicant, therefore, accrued unlawful presence from February 2004 until he was granted voluntary departure in March 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his April 1, 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 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. The plain language of the statute indicates that hardship that the applicant experiences upon removal is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's father if the applicant is found to be inadmissible. 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 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 father 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 father travels with the applicant to Mexico, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in Mexico. *Form G-325A, Biographic Information, for the applicant*. The applicant's father states that his wife and other children have been staying in Mexico to be with the applicant. *Statement from the applicant's father*, dated July 9, 2006. The applicant's father states that he cannot support his family on wages earned in Mexico, and, therefore, he cannot live and work there. *Id.* While the AAO acknowledges this statement, it notes that the record fails to include published country conditions reports

documenting the economy and employment opportunities 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 does not document whether the applicant's spouse suffers from any type of health condition, physical or mental, and if so, whether he would be able to receive adequate care in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in Mexico.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. As previously noted, the applicant's father was born in Mexico. *Form G-325A, Biographic Information sheet, for the applicant's father*. The applicant's father states that his wife and other children have been staying in Mexico to be with the applicant, and that all of their other relatives are in the United States. *Statement from the applicant's father*, dated July 9, 2006. The applicant's father states that he sends money to Mexico for his family and he has a lot of expenses in the United States, so it has been difficult for him on a financial level. *Id.* While the AAO acknowledges these statements, it notes that the record fails to include documentation to support such assertions. The record does not include money transfers showing that the applicant's father sends money to his family in Mexico, nor does the record include documentation such as mortgage/rent statements, credit card bills, or utility bills showing the applicant's father's expenses in the United States. The applicant's father states that he has lost weight and sleep over this matter. *Id.* The AAO notes that the record does not include a statement from a licensed healthcare professional regarding the physical or mental health of the applicant's father. As previously noted, 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 applicant's father states that all he does is think about this problem and wonder how his family will all be together again. *Statement from the applicant's father*, dated July 9, 2006. While the AAO acknowledges these difficulties, 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 hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's father will endure hardship as a result of 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 father 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 his father if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.