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U.S. Department of Homeland Security
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] (CDJ 2004 712 494) 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 married to a United States citizen and has two United States citizen children. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their children.

The District Director 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 District Director,* dated June 26, 2006.

On appeal, the applicant's spouse contends that she would suffer extreme hardship by being separated from her spouse. *Form I-290B, Notice of Appeal to the Administrative Appeals Office, and attached statement from spouse.*

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a bank statement; car payments; a cable bill; a telephone bill; a statement from a condominium accountant; an electric bill; a condominium dues statement; credit card statements; police clearance letters for the applicant; statements from co-workers and friends; and earnings statements for the applicant. 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 application, the record indicates that the applicant entered the United States without inspection in April 2000 and remained until October 2005. *Form OF-194, Refusal Worksheet.* The applicant, therefore, accrued unlawful presence from April 2000 until he departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his October 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 or his children would experience as a result of his inadmissibility 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 spouse 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 spouse must be established whether she resides in Mexico or the United States, as she 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 relocates to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate.* The parents and grandparents of the applicant's spouse were born in Mexico. *Statement from the*

applicant's spouse, dated July 15, 2006. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record fails to address what types of familial and cultural ties the applicant's spouse may have in Mexico. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The record does not address what employment opportunities the applicant's spouse would have in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record does not document whether the applicant's spouse suffers from any type of health condition, physical or mental, and, if so, whether she 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 spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth Certificate.* The applicant's spouse notes that she and her children are suffering financially. *Statements from the applicant's spouse*, dated July 15, 2006 and October 16, 2005. The record includes various bills documenting the expenses of the applicant's spouse. *Car payments; cable bill; telephone bill; statement from condominium accountant; electric bill; condominium dues statement; and credit card statements.* While the AAO acknowledges these expenses, it notes that the record does not demonstrate that the applicant would be unable to obtain employment in Mexico and contribute to his family's financial well-being from a place other than the United States. The record does not include published country conditions reports documenting the economic situation in Mexico and the opportunities there for employment.

The applicant's spouse notes that being separated from the applicant would cause her to suffer emotionally. *Statement form the applicant's spouse*, dated July 15, 2006. While the AAO acknowledges these emotions, 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 spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she 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 his spouse if she 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.