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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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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **NOV 2 5 2009**

IN RE: Applicant: [redacted]

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

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).**

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen wife.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 13, 2006.

On appeal, the applicant, through counsel, asserts that "[t]he Service failed to conclude that the [applicant's] U.S. citizen relative will suffer extreme hardship. The Service applied the wrong standard and did not considered [sic] relevant facts that were presented as part of the complete file." *Form I-290B*, filed December 7, 2006.

The record includes, but is not limited to, letters from the applicant's wife, and regarding the applicant's wife's health conditions. The entire record was reviewed and considered in arriving at 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 [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 in April 1999 without inspection. On December 26, 2004, a Notice to Appear (NTA) was issued. On March 1, 2005, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On April 12, 2005, an immigration judge granted the applicant voluntary departure to depart the United States by August 10, 2005. On August 9, 2005, the applicant departed the United States. On August 15, 2005, the applicant's wife filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant. On October 19, 2005, the applicant's Form I-129F was approved. On February 15, 2006, the applicant filed a Form I-601. On November 13, 2006, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse. On August 29, 2007, the applicant's Form I-130 was approved.

The applicant accrued unlawful presence from April 1999, the date the applicant entered the United States without inspection, until April 12, 2005, the date an immigration judge granted the applicant voluntary departure. The applicant is attempting to seek admission into the United States within 10 years of his August 9, 2005 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

In a letter dated July 29, 2006, the applicant's wife states the applicant "has been supportive of [her]", and she needs and misses him. In a letter dated July 13, 2007, [redacted] states the applicant's wife has "a history of severe, inoperable coronary artery disease and has angina pectoris. Currently, she is on multiple medications." In a letter dated July 20, 2007, [redacted] states the applicant's wife "has some chronic but well controlled illnesses. [The applicant] assists her and would be beneficial

to have here with her." The AAO notes that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive any medical treatments. In an affidavit, the applicant's wife states "the health system and the employment situation in Mexico [are] not good for [her]." The AAO notes that states the applicant's wife "cannot be employed in any job that would require having physical activity"; however, it has not been established that the applicant's wife could not obtain a job that does not require physical activity or that she has no transferable skills that would aid her in obtaining a job in Mexico. The applicant's wife states she cannot afford to visit the applicant in Mexico. The AAO notes that the applicant's wife may experience some hardship in relocating to Mexico, a country in which she apparently has no previous ties; however, the AAO notes that it has not been established that the applicant's wife does not speak Spanish or that she has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, with access to her medical treatments and medications. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. In a letter dated February 17, 2006, the applicant's wife states the applicant helped pay the household bills. The AAO notes that it has not been established that the applicant is unable to obtain employment in order to help support his wife, or that he is unable to contribute to his wife's financial wellbeing from a location outside of the United States. In fact, the AAO notes that the applicant is working in maintenance in Mexico. Moreover, the United States 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).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan*, *supra,* the Ninth Circuit Court of Appeals 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.

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.