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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



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**U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: SEP 01 2009

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, 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 (Ciudad Juarez), Mexico City. 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 U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

In his decision, dated June 5, 2006, the district director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from May 2000 until May 2005. The district director also found that the record failed to establish extreme hardship to a qualifying relative as a result of his inadmissibility. The application was denied accordingly.

On appeal, the applicant's spouse submits additional documentation regarding hardship to her as a result of the applicant's inadmissibility to the United States. She states, on the Notice of Appeal to the Administrative Appeals Office, dated July 1, 2006, that she feels the decision in her spouse's case was incorrect, she did not know what evidence she was supposed to submit, and she is including documentation on appeal.

In the present application, the record indicates that the applicant entered the United States without inspection in May 2000. The applicant remained in the United States until May 2005. Therefore, the applicant accrued unlawful presence from when he entered the United States in May 2000 until May 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his May 2005 departure from the United States. Therefore, the applicant is 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.

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.

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 and/or parent of the applicant. Hardship the applicant or his child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant’s U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she resides in Mexico and in the event that she resides in the United States, as she is not required to

reside outside of 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.

The record of hardship in this case includes two statements and one letter from the applicant's spouse, a letter from the applicant's employer, and a report concerning the applicant's child. In a statement dated September 12, 2005, the applicant's spouse states that since the applicant's departure from the United States her son has changed his behavior from a well-mannered happy two year old to being sad and acting out at daycare. She states that it breaks her heart and is very frustrating to have to explain to her son why his father is not in the United States. The applicant states that she feels being separated from the applicant is more hardship for her son than it is for her.<sup>1</sup> The applicant also states that she is starting to feel depressed and that she and the applicant have never been separated for so long. She states that if she has to relocate to Mexico she will lose her job and if the applicant is unable to return to the United States soon, he will also lose his job. The applicant's spouse states that the applicant's situation also affects her financially because she and the applicant would split all of the expenses. She states that she is finding it hard to buy groceries, pay their bills, and pay for childcare without the help of the applicant. She also states that she feels emotionally drained and sad.

The AAO notes that the record contains two incident reports from the Washington State Migrant Council stating that the applicant's son bit another child on August 4, 2005 and August 8, 2005.

In her second statement, dated July 1, 2006, the applicant's spouse states that the family has been separated for over a year and that it has been hard trying to manage everything on her own. She states that she has been to Mexico to visit the applicant for a month. She states that it is extreme hardship to have her son without a father and her without a husband. She also states that the applicant is needed at his employer in the United States.

In a letter dated September 13, 2006, the applicant's spouse states that she needs the applicant in the United States because she is suffering extreme financial hardship. She also states that the applicant has now missed a year and a half of their son's life and it is extremely painful to be separated from the applicant.

The AAO notes that the record also includes a letter from the applicant's employer, Northwest Horticulture, dated July 5, 2006, which states that the applicant and his spouse are employed with the company. The employer also states that the applicant's family and Northwest Horticulture need him back in the United States.

The AAO finds that the applicant's spouse's current situation does not rise to the level of extreme hardship, but describes what is commonly experienced when an immediate family member is removed from the United States. Furthermore, the applicant's spouse does not fully address the

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<sup>1</sup> The AAO notes, as stated above, hardship to the applicant's child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to the applicant's U.S. citizen spouse. Thus, hardship to the applicant's son will only be considered where it is shown that his hardship is causing hardship to the applicant's spouse.

possibility of relocating to Mexico to be with the applicant. In the current record she simply states that she would lose her employment in the United States if she moved to Mexico, but does not address economic opportunities in Mexico. Thus, the AAO finds that the applicant has not demonstrated that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility.

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.

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.