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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] Office: MEXICO CITY (CIUDAD JUAREZ) Date: SEP 02 2009
(CDJ 1993 861 601 relates)

IN RE: [REDACTED]

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

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 Officer in Charge, Mexico City. The matter 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 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. 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 with his U.S. citizen father and lawful permanent resident mother in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated September 22, 2006.

The record contains, *inter alia*: letters from the applicant, his mother, [REDACTED] and his father, [REDACTED]; copies of [REDACTED] naturalization certificate, [REDACTED] permanent resident card, and the applicant's siblings' passports; a copy of a prescription for [REDACTED] copies of money orders; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) 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 this case, the record shows that the applicant entered the United States without inspection from 1995 until 1996 and again from January 2003 until October 2004. The applicant accrued unlawful presence for over one year. He now seeks admission within ten years of his 2004 departure. Accordingly, he is 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 one year or more.

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 or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

It is not evident from the record that the applicant's parents have suffered or will suffer extreme hardship as a result of the applicant's waiver application being denied.

In this case, the applicant's father, [REDACTED] states that the applicant is his only child left in Mexico and that all of his other children are living in the United States as U.S. citizens. [REDACTED] states that the applicant is his oldest son whose "only wish in life is to come to the USA with his parents and brother and sisters." [REDACTED] states that he has gone into a deep depression since his son's waiver application was denied and that he cannot sleep, eat, or work. [REDACTED] states he has been put on medication as a result. *Letter from* [REDACTED], dated October 2, 2006.

The applicant's mother, [REDACTED] states that she and her husband have worked very hard to bring their family to the United States and that the applicant is the only one left in Mexico. She states she is "very tired and ill due to a problem in [her] legs" and hopes her son can come to the United States to work so that she can stay home. *Letter from* [REDACTED] dated November 28, 2005.

The applicant states that as the oldest son of the family, he has an obligation to help his parents educate his younger brothers and sisters. He states that the region where he lives in Mexico has no future and that the only work available is field work which does not pay enough for a person to survive. The

applicant states he is a young person with a lot of energy and desire to work. He states he wants to have a wife and children and to live in the United States. He states his parents work very hard, that he would like to help them with their expenses, and that his father makes \$11 per hour. The applicant states he worries about his parents' health and that they suffer from arthritis that gets worse every day. *Letter from [REDACTED]* undated.

The record contains a copy of a prescription and a receipt from a medical clinic indicating that [REDACTED] was prescribed Ambien for insomnia and Xanax for anxiety.

The AAO recognizes that [REDACTED] have endured hardship since the applicant departed the United States, but there is insufficient evidence in the record to show extreme hardship to the applicant's parents since the applicant's departure. Significantly, [REDACTED] do not discuss the possibility of moving back to Mexico to avoid the hardship of separation, and they do not address whether such a move would represent a hardship to them. If [REDACTED] remain in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

With respect to [REDACTED] fatigue due to a problem in her legs and [REDACTED] depression, although the record contains a copy of a prescription for [REDACTED] there is no evidence from any health care professional or mental health professional addressing the diagnosis, prognosis, or severity of either of the applicant's parents' health conditions. To the extent the applicant states that both [REDACTED] have arthritis, significantly, neither of the applicant's parents mention arthritis in their letters in the record. In addition, although the applicant contends he would like to help his parents financially, neither of the applicant's parents makes a financial hardship claim and there are no tax or financial documents in the record. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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)(v) 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.