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FILE:

Office: LOS ANGELES, CA Date:

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IN RE:

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife and child.

The district director found that there is no evidence in the record to support a finding that the applicant's spouse would experience any extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the Acting District Director*, dated January 27, 2005.

On appeal, counsel submits new evidence and asserts that the director incorrectly applied the extreme hardship standard and did not properly consider in the aggregate, all the material facts in determining whether extreme hardship existed. *Counsel's Brief*, undated.

In support of these assertions, counsel submits a declaration from the applicant's spouse, a psychological report from a David Morgan, M.F.T and a second psychological report completed two years later from Dr. Hebe Beatriz Lein. 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.

On the applicant's waiver application he states that he has resided in the United States since February 1997, when he first entered the country without inspection. The applicant states that he departed the United States in March 2000 and entered illegally for a second time that same month. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 2000, the date of his last departure from the United States. In applying to adjust his status to that of Lawful Permanent Resident, the applicant is seeking admission within 10 years of his March 2000 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences or his child experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 (BIA 1999) provides a list of factors the Bureau 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 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.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Mexico in order to remain with the applicant. Counsel indicates that the applicant's spouse moved to the United States when she was two years old and has been residing in the United States for 30 years. The applicant's spouse's mother and six brothers and sisters reside in the United States. She has no family in Mexico. The applicant's spouse is also employed with the Los Angeles city government as a child abuse investigator and states that if she were to relocate to Mexico she would not be able to continue with her career. The AAO finds that taking into consideration the spouse's strong family ties to the United States, length of residence in the United States, and her specific career path in the United States, she would suffer extreme hardship as a result of relocation to Mexico.

However, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her employment and closeness to her family. Counsel asserts that the applicant's spouse will suffer emotionally as a result of the applicant's removal. In support of this assertion, the applicant submitted two psychological evaluations. The first evaluation, from [REDACTED] dated April 7, 2003 asserts that the applicant's spouse presented symptoms of anxiety as well as depressed mood. Mr. [REDACTED] states that the applicant's spouse asserts that she is under considerable stress and anxiety caused by the possible removal of her spouse. Mr. [REDACTED] diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Mr. [REDACTED] states that he will see the applicant's spouse in ongoing individual therapy and referred her to his office's Stress Management Group. The AAO notes that the record does not contain

any follow-up reports from the applicant to show that his spouse was receiving ongoing therapy. The second psychological evaluation, from Dr. [REDACTED] dated April 11, 2005, states that she evaluated the applicant's spouse during a single session for two hours. Dr. [REDACTED] concludes that the applicant's family is under a great deal of stress and fear because of the applicant's possible removal.

Although the input of any mental health professional is respected and valuable, the AAO notes that both reports submitted were based on interviews done during a single meeting between the applicant's family and the mental health professional. The record fails to reflect any ongoing relationships with the applicant's spouse or any history of treatment for the disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted reports, being based on one-time self-reporting interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering Dr. [REDACTED] and Mr. [REDACTED]'s findings speculative and diminishing the reports' value in determining extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.