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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: ST. PAUL, MINNESOTA

Date:

JAN 06 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:

[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).

John F. Grisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota. 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 lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their two United States citizen children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Director*, dated June 22, 2006.

On appeal, the applicant asserts that the District Director erred in determining that his qualifying relative would not suffer extreme hardship if he were not granted a waiver of the unlawful presence bar to admissibility. *Form I-290B*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a statement from [REDACTED] Fergus Falls Medical Group, P.A., dated July 24, 2006; medical appointment notices for the applicant's son; a nebulizer rental agreement; a school report card for the applicant's son; photographs; a statement from the applicant's pastor; a statement from the father of the applicant's spouse; a statement from the aunt of the applicant's spouse; a statement from a friend; a statement from the applicant's son; employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; Forms W-2 for the applicant's spouse; earnings statements for the applicant and his spouse; and a car insurance policy. 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 March 1997 and remained for three years. *Form G-325, Biographic Information, for the applicant; Form I-485, Application to Register Permanent Resident or Adjust Status*. He again entered without inspection in April 2000. *Id.* The applicant filed the Form I-485 on November 17, 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he departed the United States in 2000. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his 2000 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 himself or his children would experience upon removal is not directly relevant to the determination as to whether the applicant 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 the adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico, but states that she has no family there. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Birth certificate; Statement from the applicant's spouse*, dated August 7, 2006. She asserts that her parents and other family members live in the Midwest and that a move to Mexico would tear her and her children away from her family, people who are important in her children's lives. *Id.* The applicant's spouse also states that she and the applicant take their children to local parks, to local lakes for swimming and to play in the snow in the winter, and that, in Mexico, there are not as many places for children to enjoy. *Statement from the applicant's spouse*, dated August 7, 2006. She notes that she would be worried about crime and what could happen to her two young children or to her. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record fails to include published reports on criminal activity in Mexico documenting such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Furthermore, as previously noted, the applicant's children are not qualifying relatives for the purposes of this case and any hardship they may experience will only be analyzed in the context of how it impacts the applicant's spouse, the only qualifying relative in this particular case.

One of the applicant's children suffers from asthma and bronchitis and relies upon a nebulizer to help with his breathing. *Statement from the applicant's spouse*, dated August 7, 2006; *Medical appointment cards for the applicant's son, Fergus Falls Medical Group, P.A.; Nebulizer rental agreement, Lincare*, dated April 28, 2006. While the AAO acknowledges the medical condition of the applicant's child, it notes that the record fails to include supporting documentation, such as published country conditions reports or statements from licensed health professionals, to show that the applicant's child would be unable to receive appropriate treatment in Mexico. The record also fails to show how the health condition of the applicant's child in Mexico would affect the applicant's spouse.

The aunt of the applicant's spouse notes that, as someone who was born in Mexico, she believes that an individual is able to find work in Mexico but cannot make a living. *Statement from the aunt of the applicant's spouse*, dated August 5, 2006. The applicant's spouse also states that relocating to Mexico would be virtually impossible financially. She asserts that, in Mexico, the family would have no home, no means of transportation, no access to medical care or insurance and would not be able to obtain employment to afford these necessities. *Statement from the applicant's spouse*, dated August 7, 2006. The AAO again notes that the record fails to include documentation, such as published country conditions reports, regarding the economy and employment rates in Mexico, to support such assertions. As previously indicated, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). 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 his spouse will suffer extreme hardship. The parents of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse states that if the applicant were in Mexico, she would be the sole source of economic support for the applicant and their two children. *Statement from the applicant's spouse*, dated August 7, 2006. She notes that they could rely upon her parents for some help, but that her parents have their own expenses. *Id.* She would have to spend more time away from her children because she would have to work longer hours to make ends meet. *Id.* At the same time, she asserts that there would be additional expenses such as daycare costs and money that she would have to send to the applicant. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it again finds that the record does not include any documentation to establish the economic and employment situation in Mexico, showing that the applicant would be unable to contribute to his family's financial well-being from Mexico or a place other than the United States. The applicant's spouse's parents live in the same city in Minnesota. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. While the applicant's spouse states that her parents have their own expenses, the record fails to document what those expenses may be and there is nothing in the record to demonstrate that her parents would be unable to assist her with child care. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)).

The applicant's spouse notes that the applicant's absence from important family events would be devastating for their children, not to mention how she would be affected by not having him by her side. *Statement from the applicant's spouse*, dated August 7, 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.