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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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JUL 08 2009



FILE: [REDACTED]
(CDJ 1992 862 929)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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 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 District Director, Mexico City, Mexico. 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 the son of a lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his father.

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 District Director*, dated June 16, 2006.

On appeal, the applicant¹ contends that United States Citizenship and Immigration Services (USCIS) erred in finding him inadmissible under section 212(a)(9)(B) of the Act, as he voluntarily departed the United States. The applicant also asserts that USCIS erred in finding that he had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B; Applicant's statement.*

In support of the applicant's claim to extreme hardship, the record includes, but is not limited to, statements from the applicant and his father. 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.

¹ The AAO notes that the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, that is signed by an individual who is not the applicant. As the Form G-28 is not signed by a party to the proceedings involving the applicant, the AAO will consider the applicant to be self-represented.

....

(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 matter, the record indicates that the applicant entered the United States without inspection in December 1999 and voluntarily departed the United States, returning to Mexico in March 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated June 21, 2005. The applicant, therefore, accrued unlawful presence from December 1999 until he departed the United States in March 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his March 2005 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.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant asserts that section 212(a)(9)(B)(i)(II) was intended to prevent individuals who have departed or been removed through deportation proceedings from re-entering the United States for ten years. *Applicant's statement*. As he voluntarily departed the United States to seek adjustment of status, the applicant asserts that he is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. *Id.* While the AAO acknowledges the applicant's assertions, it notes that the plain language of the Act does not differentiate between individuals who have voluntarily departed the United States and those who have not. As such, the AAO finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 experiences upon removal is not directly relevant to the determination as to whether he 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 father 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 father must be established whether he resides in Mexico or the United States, as he 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 adjudication of this case.

If the applicant's father travels with the applicant to Mexico, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in Mexico. *Form G-325A, Biographic Information, for the applicant.* The record does not address how the applicant's father would be affected if he resides in Mexico. The record fails to address what types of familial and cultural ties the applicant's father has in Mexico. The record does not address whether the applicant's father speaks Spanish and how his language abilities, or lack thereof, would affect his adjustment to Mexico. The record does not address what employment opportunities the applicant's father would have in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living there. The record does not document whether the applicant's father suffers from any type of health condition, physical or mental, and if so, whether he would be able to receive adequate care in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in Mexico.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father states that he is very sick and cannot drive to his doctor appointments or go to the location(s) where he needs to pay his bills. *Statement from the applicant's father*, dated October 6, 2005. He notes that he needs the applicant to take care of him at night when he is alone and is not able to care for himself, as the applicant is the only family member who can help him with his issues. *Id.* While the AAO acknowledges these assertions, it notes that the record does not include any statement from a licensed healthcare professional documenting the physical or psychological health conditions of the applicant's father. The AAO also notes that the Form I-601, Application for Waiver of Ground of Excludability, indicates that the applicant has a brother who, like their father, resides in Houston, Texas. The record does not indicate that the applicant's brother is unable or unwilling to provide for their father's healthcare needs. The record does not include bank statements for the applicant's father, bill statements, or other documentation showing his economic situation. Furthermore, the record does not demonstrate that the applicant would be unable to contribute to his father's financial well-being from Mexico. 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)).

While the AAO acknowledges the difficulties of being separated from one's son, 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 father will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he 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 father if he 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.