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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: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO

Date: JUL 13 2009

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:

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).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), 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 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.

The district director found that the record failed to establish that the applicant's U.S. citizen spouse would suffer extreme hardship as a result of his continued inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated June 1, 2006.

With the applicant's Form I-290B, Notice of Appeal to the AAO, dated June 18, 2006, the applicant's spouse submits additional documentation and letters in support of the applicant's waiver.

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 September 5, 2005. Therefore, the applicant accrued unlawful presence from when he entered the United States in May 2000 until September 5, 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his September 5, 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 AAO notes that much of the hardship record, including statements and medical records, is in Spanish and because the applicant failed to submit certified translations of these documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In a statement, dated June 18, 2006, the applicant's spouse states that she and her son lived with the applicant for five months in Mexico and her son was ill the entire time because of the weather. She states that they returned to the United States because of her son's allergies and because she needed to care for her parents. She also states that she needed to find employment to help pay the family bills. The applicant's spouse states that her son cries when he asks about his father and that the applicant is a part of their family that they cannot live without. In another statement, submitted with the initial waiver application and undated, the applicant's spouse states that the applicant works so that she can take care of their eighteen month old son. She states that if the applicant were removed from the United States, she would have to put her son in child care and work two jobs in order to pay the family's expenses. The applicant's spouse states that the applicant's income helps not only their immediate family, but her parents in the United States and the applicant's family in Mexico. She states that they are currently in Mexico, living with the applicant's parents and that their son is suffering from mold allergies. She states that the last time their son was sick he had pneumonia and bronchitis. She states that to try and help their son they have a dehumidifier, daily allergy medication and skin cream. The applicant's spouse states that she will try to stay in Mexico with the applicant until his papers are processed but that her mother has health problems and often she is the only one who is able to care for her.

The record includes a note from the applicant's spouse's mother's doctor, dated June 15, 2006, which states that the applicant's mother-in-law is morbidly obese and has severe degenerative arthritis. The doctor states that these conditions greatly limit the applicant's mother-in-law's ability to move around and perform activities for daily living. The doctor states that she relies a great deal on her daughter for daily living and that the applicant's father-in-law also suffers from degenerative disease of the spine, which limits his activity.

The record also includes a letter from the applicant's mother-in-law, dated June 16, 2006. The applicant's mother-in-law states that her daughter and grandson moved to Mexico to be with the applicant from September 2005 until January 2006 and that her grandson was sick most of the time that they were in Mexico. She states that her daughter returned to the United States because of her son's health and to find employment. She also states that she and her husband are in poor health and that having the family separated is very stressful. She states that if necessary, her daughter will relocate to Mexico to be with the applicant.

The AAO finds that the documentation in the record is incomplete and thus, does not warrant a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. The record does not include any medical documentation to support the claims

made concerning the applicant's son and his health problems while in Mexico nor does the record include documentation to show that his allergies were worse in Mexico than in the United States and/or that the health care he received in Mexico was less than what he would have received in the United States. In addition, no documentation was provided to support claims made about the applicant or his spouse obtaining employment in Mexico. 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)). Furthermore, the AAO finds that the documentation submitted regarding the applicant's spouse being required to care for her mother is not clear. The applicant's spouse states that her mother has health problems and often she is the only one who is able to care for her. The mother's doctor states that applicant's mother-in-law relies a great deal on her daughter for daily living. The applicant's spouse's mother states that she and her husband depend on her daughter and the applicant, but if necessary her daughter would move to Mexico. This statement by the mother-in-law does not reflect that the applicant's spouse is needed in her daily life and that she would suffer if her daughter relocated to Mexico. Moreover, the applicant's spouse does not claim that leaving her parents in the United States while she relocates to Mexico to be with the applicant would cause her 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.

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. The AAO notes that the record includes a letter of recommendation for the applicant from [REDACTED]. However, 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.