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FILE:

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Office: MEXICO CITY, MEXICO

Date:

(CDJ 1993 601 157)

IN RE:

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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. 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's parents are lawful permanent residents and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated February 28, 2006.

On appeal, counsel asserts that the applicant's spouse's parents would suffer extreme hardship should the applicant's spouse be unable to remain in the United States. *Brief in Support of Appeal*, at 4, dated March 27, 2006.

The record includes, but is not limited to, counsel's brief, a physician's letter for the applicant, the applicant's statement and statements from the applicant's family members. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in March 1998 and voluntarily departed the United States in January 2000. The applicant accrued unlawful presence from March 1998, the date he entered the United States, until January 2000, the date he departed the United States. The applicant 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 more than one year and seeking readmission within ten years of his January 2000 departure.

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 or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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 a qualifying relative must be established whether the qualifying relative resides in Mexico or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. Counsel states that all of the applicant's parents' family resides in the United States, they are very close to their entire family, they have four U.S. citizen children and six lawful permanent resident children, and they have significant family ties in the same city that they reside in. *Brief in Support of Appeal*, at 4-5. Counsel states that the applicant's parents live rent free with their children and are therefore, able to get by on their social security income, they would have great difficulty finding employment in Mexico and they would be unable to support themselves. *Id.* at 5. Counsel states that the applicant's parents have no family ties to Mexico and they rely on their children financially and spiritually, and they have been away from Mexico for 13 years. *Id.* Counsel states that the applicant's parents will have to rent their own apartment, take care of their transportation needs, find employment, and care for their son. *Id.* at 6. Counsel states that the applicant's parents are lawful permanent residents and that they would lose their status if they live in Mexico for more than one year. *Id.* Based on the potential loss of the applicant's parents' lawful permanent residence, their numerous family ties in the United States and that both are more than 70 years of age, the AAO finds that they would suffer extreme hardship if they relocated to Mexico permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant recently had a tumor removed from his kidney, his mother takes care of him, his parents have a limited income of \$162 per month, and it would be an extreme hardship for them to travel to Mexico to care for him based on their age and income. *Id.* at 3. The applicant states that he is incapacitated and unable to

work, his parents have been coming down to take care of him, it is very hard on them, they are old and have a limited income, and they should not be doing this. *Applicant's Statement*, at 2, dated March 18, 2006. The record includes a physician's letter regarding the applicant's previous medical treatment in Mexico, but the letter fails to establish that the applicant has had any recent surgeries or indicate the current state of his health. The applicant's sister, with whom the applicant's parents reside, details the assistance that the applicant provides to her and the difficulty that she will encounter without him. *Applicant's Sister's Statement*, at 1, dated March 18, 2006. However, the record does not reflect how hardship to her will affect the applicant's parents. The applicant's mother states that that she has made frequent trips to Mexico and she lacks the energy to continue this travel. *Applicant's Mother's Statement*, undated. The record does not contain any other evidence of emotional, financial or other types of hardship. The record reflects that the applicant's parents will experience difficulty if the applicant resides in Mexico. However, it does not include sufficient evidence to establish that either of the applicant's parents will experience extreme hardship if they remain in the United States without the applicant.

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. 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.