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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: MEXICO CITY

Date:

MAR 05 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. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband and child.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated March 27, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from Counsel*, dated May 22, 2006. Counsel contends that U.S. Citizenship and Immigration Services (USCIS) did not consider hardship to the applicant's lawful permanent resident mother. *Id.* at 2.

The record contains statements from counsel; statements from the applicant's husband; medical documentation for the applicant's child; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; a copy of the applicant's child's birth certificate. 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:

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.

The record reflects that the applicant entered the United States without inspection in or about March 1998. She remained until she voluntarily departed in April 2005. Accordingly, the applicant accrued approximately seven years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative immigrant visa petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant does not contest her inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 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 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.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from Counsel*, dated May 22, 2006. Counsel explains that the applicant's husband has resided in the United States for over 20 years, and that he has been employed with his current employer for over 17 years. *Id.* at 2. Counsel states that the applicant's husband has a daughter in the United States from a previous marriage with whom he is close. *Id.* Counsel provides that the applicant's husband will experience extreme hardship should he relocate to Mexico with the applicant, as he would lose his employment and be separated from his daughter. *Id.*

Counsel contends that the applicant's husband would be unable to support his children from Mexico. *Id.* Counsel indicates that the applicant's two-year-old son requires medical attention, and that the applicant and the applicant's husband agree that their son's needs would be best met in the United

States. *Id.* Counsel states that the applicant believes her son will have better opportunities in the United States for education, safety, and happiness. *Id.* Counsel explains that the applicant's husband works and travels, and that the applicant has served as a stay-at-home mom. *Id.* Counsel contends that the applicant's husband would be compelled to find alternative childcare should the applicant be prohibited from entering the United States. *Id.*

Counsel states that the applicant's husband has endured emotional hardship due to separation from the applicant. *Id.* Counsel notes that the applicant's husband's mother, brothers, sisters, nephews, and nieces reside in the United States and they are permanent residents or U.S. citizens. *Id.* Counsel indicates that the applicant's mother-in-law is a permanent resident and she depends on the applicant's husband for companionship and support. *Id.* at 3.

Counsel asserts that the applicant's mother is a permanent resident residing in Pomona, California. *Id.* Counsel states that the applicant's mother abandoned her when she was age five, and that the applicant grew up with her father. *Id.* Counsel explains that the applicant found her mother and has been rebuilding a relationship for the past five years. *Id.* Counsel contends that separation from the applicant has caused the applicant's mother hardship. *Id.* Counsel contends that USCIS did not consider hardship to the applicant's lawful permanent resident mother. *Id.* at 2.

The applicant submitted a letter from her son's physician, [REDACTED], in which [REDACTED] explains that he has provided care for the applicant's son and that they have plans for the applicant's son to receive his two-year Well Child evaluation. *Letter from [REDACTED]* dated October 26, 2005.

The applicant's husband stated that he and the applicant's son will experience extreme hardship if the applicant is prohibited from entering the United States. *Statement from Applicant's Husband*, dated March 16, 2005. The applicant's husband expressed that he is close with the applicant, and that they have plans together in the United States. *Id.* at 1. He provided that he has a good job in the United States and that he would not be able to start over in Mexico. *Id.* He stated that his son would not have the same educational opportunities in Mexico. *Id.* He asserted that family separation is not an option, as it would create economic and emotional hardship for him and his son. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from entering the United States. Counsel contends that the applicant's permanent resident mother will experience extreme hardship should the applicant be prohibited from entering the United States. However, the applicant has not submitted a statement from her mother or any other documentation relating to hardships her mother may experience. Without documentary evidence to support a factual claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the applicant has not shown that her mother will experience extreme hardship should the present waiver application be denied.

The applicant has not shown that her husband will experience extreme hardship should she be prohibited from entering the United States. The applicant's husband expressed that he is close with the applicant and that he will suffer emotional hardship if he continues to be separated from her. Counsel explained that the applicant's husband has significant family and employment ties to the United States, suggesting that he would suffer emotional hardship should he leave them and join the applicant abroad. However, the applicant has not distinguished her husband's emotional consequences from those commonly expected when spouses are separated due to inadmissibility, or when a spouse departs the United States to maintain family unity. U.S. court decisions have 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.

Counsel contends that the applicant's husband has a daughter in the United States from a prior marriage, and that he would suffer emotional hardship if he is separated from her. However, the applicant has not submitted evidence that her husband has another child, such as a birth certificate.

The applicant's husband stated that denial of the present waiver application will cause economic hardship for him. It is reasonable that the applicant's husband may be required to secure childcare for his son should his son reside with him in the United States. It is further evident that the applicant's husband would incur the loss of his employment and expenses associated with relocating to Mexico should he join the applicant abroad. However, the applicant has not provided sufficient explanation or documentation to show that her husband would experience economic detriment that rises to the level of extreme hardship. The applicant hasn't stated or shown her husband's present income, resources, regular expenses, or economic requirements upon relocation. Nor has the applicant asserted or shown that she is unable to secure employment to help meet the family's needs. While the AAO acknowledges that the applicant's husband would experience financial consequences should he relinquish his current employment of long duration, the applicant has not shown that he would suffer serious economic hardship.

The applicant's husband referenced hardships to the applicant's son that may result from denial of the waiver application. Hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable to expect that the child's emotional state due to separation from the applicant or departing the United States will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. While the AAO acknowledges that the applicant's husband

wishes for his son to take advantage of opportunities in the United States, the applicant has not shown that her son would suffer unusual consequences such that the applicant's husband would experience significant additional hardship. The applicant provided a letter from her son's physician in the United States, but the letter does not identify any health conditions or medical needs other than routine examination. Thus, the applicant has not asserted or shown that her son requires medical care that cannot be obtained in Mexico. Accordingly, the applicant has not shown that hardship to her son will elevate her husband's consequences to extreme hardship.

It is noted that the applicant's husband is a native and citizen of Mexico, thus it is assumed that he would not face the consequences of adapting to an unfamiliar language or culture should he return there for the remaining years that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband. Section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.