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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
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FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ) Date **MAY 04 2009**

(CDJ 2004 702 263)

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. 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.

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 June 5, 2006.

On appeal, the applicant's husband asserts that the applicant did not accrue unlawful presence during the period referenced by the district director, and thus she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. *Statement from the Applicant's Husband*, submitted July 17, 2006. In a prior statement, the applicant's husband asserted that he is enduring financial and emotional hardship due to separation from the applicant. *Prior Statement from the Applicant's Husband*, dated December 16, 2005.

The record contains statements from the applicant's husband; documentation in a foreign language, purported to be evidence of the applicant's presence in Mexico; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate, and; documentation regarding the refusal of the applicant's immigrant visa, including a finding that she resided unlawfully in the United States from November 2001 to November 2003. Because the applicant failed to submit certified translations of some of the foreign language 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. 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 matter, the district director noted in his decision that the applicant entered the United States without inspection in 1992, and remained until she voluntarily departed in July 2005. Thus, the district director found that the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until July 2005, totaling over one year. The district director deemed the applicant inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

On appeal, the applicant's husband states that the applicant did not reside in the United States during the period identified by the district director. *Statement from the Applicant's Husband* at 1. The applicant's husband asserts that he met the applicant in Tijuana, Mexico in 2002, and that she came to California in November 2002 to plan their marriage, which took place in January of 2003. *Id.* He states that she then returned to Tijuana where he would visit her every weekend. *Id.* He explains that she was transferred to her hometown in Valle de Bravo in late 2004. *Id.* The applicant's husband references documentation provided on appeal as evidence that the applicant resided in Mexico during the identified periods. *Id.*

Upon review, it is noted that the applicant submitted a Form G-325A, Biographic Information, in which she represented that she resided in the United States from November 2001 until November 2003. *Form G-325A*, dated March 8, 2005. A memorandum from a consular officer reflects that the applicant was found to have resided in the United States without a legal status from November 2001 until November 2003. The record does not contain documentation to support the district director's finding that the applicant was in the United States unlawfully from 1992 until 2005, and it is presumed that the district director's identification of this period was a typographical error. However, the Form G-325A in the record is signed by the applicant and clearly states that she was residing in the United States from November 2001 until November 2003. The applicant submits evidence on appeal to show that she was in Mexico, yet these documents are dated in 1990, 1995, 2000 and 2004-2005. Thus, they do not serve as evidence that the applicant was outside the United States from November 2001 until November 2003.

Based on the foregoing, the applicant has not shown that she was outside the United States from November 2001 until November 2003. As she did not have a legal immigration status during that period, she was correctly deemed inadmissible under section 212(a)(9)(B)(II) of the Act.

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, the applicant does not present additional evidence or explanation to show that her husband will experience extreme hardship if she is prohibited from entering the United States. In a prior statement, the applicant's husband provided that the applicant's absence is causing him emotional and economic hardship. *Prior Statement from the Applicant's Husband*, dated February 16, 2005. The applicant's husband indicated that he works in a warehouse and does not earn much income, and that the applicant is unable to work in Mexico due to the birth of their son. He explained that the applicant has no permanent home in Mexico, and that she stays with family members. He provided that the applicant and their son have no medical insurance, yet they would gain insurance and educational opportunities if they join him in the United States. The applicant's husband stated that he is enduring economic hardship due to supporting his wife and son in Mexico while meeting his needs in the United States.

The applicant's husband indicated that he has sold personal property to attempt to meet his financial needs. *Second Prior Statement from the Applicant's Husband*, dated December 27, 2005. He explained that he has not been able to realize his educational goals due to the need to work to support his family. The applicant's husband expressed that he values the family unit, and that he has suffered emotional hardship due to being separated from the applicant and his son.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant's husband expressed that he will experience emotional hardship if the applicant is prohibited from entering the United States. He indicated that he values family, and that he has rarely had the opportunity to see his son. Yet, the

applicant has not distinguished her husband's emotional hardship from that which is commonly experienced when spouses are separated due to inadmissibility.

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.

The applicant's husband stated that he is enduring economic hardship due to the applicant's absence. Yet, the applicant has not provided documentation to clearly show her husband's income or expenses, or to show her needs in Mexico. Nor has the applicant established that she is unable to work in Mexico to help meet her and her son's needs. Accordingly, the AAO lacks sufficient documentation to show that the applicant's husband would experience significant economic hardship if he remains separated from the applicant.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should she be prohibited from entering the United States and her remain.

The applicant has not asserted or shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity. Accordingly, 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.