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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE:

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

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 his last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated June 12, 2006.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen wife requires the applicant's presence in the United States. *Statement from Counsel on Appeal*, submitted July 13, 2006. Counsel references new evidence provided in support of the appeal. *Id.* at 1.

The record contains a statement from counsel; documentation in a foreign language; a letter from the applicant's wife's doctor; a letter from the applicant's wife's sister-in-law; a letter from the applicant's sister-in-law; copies of bills for the applicant's wife; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate, and; documentation in connection with the applicant's application for an immigrant visa, and the refusal of his application. The applicant provided documentation in a foreign language with no English translations. Because the applicant failed to submit certified translations of the 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.

The record reflects that the applicant entered the United States without inspection in or about 1993, and he remained until he voluntarily departed in August 2005. The district director noted that the applicant accrued unlawful presence from 1993 until August 2005. However, the unlawful presence provisions in the Act took effect on April 1, 1997, and the applicant did not accrue unlawful presence until that date. Yet, as correctly observed by the district director, the applicant accrued over one year of unlawful presence in the United States, totaling over eight years. The applicant now seeks admission as an immigrant pursuant to a Form I-130 petition for alien relative filed by his wife on his behalf. 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 his last departure. The applicant does not contest his 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 contends that the applicant's U.S. citizen wife requires his presence in the United States. *Statement from Counsel on Appeal* at 1. Counsel references new evidence provided in support of the appeal. *Id.* However, as noted above, the applicant submitted numerous documents in

a foreign language, yet without English translations. Thus, the AAO is limited to a review of the new evidence in the English language.

The applicant provided a brief statement from _____ who stated that the applicant's wife "is suffering from a deep depression since the absence of [the applicant]." *Statement from Dr. _____*, dated July 6, 2006. _____ indicated that the applicant's wife reported that she needs the applicant's financial and emotional support. *Id.* at 1. _____ stated that the applicant's wife's depression may keep her from working in the future, and that the applicant could help in this regard. *Id.*

The applicant submitted a statement from his wife's sister-in-law, who attested that the applicant's wife and son appear depressed and lonely, and that they depend on the applicant emotionally and financially. *Statement from _____*, dated July 5, 2006.

The applicant's sister-in-law attested that the applicant's son and wife have suffered great financial and emotional distress in the applicant's absence. *Statement from _____* dated July 6, 2006. _____ lauded the applicant's good character, and expressed that he helps his family. *Id.* at 1.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The record contains references to financial hardship that will be endured by the applicant's wife. While the applicant submitted copies of a utility bill, what appears to be an insurance statement and an unidentified receipt in his wife's name, and copies of two earnings statements, these documents do not present a complete picture of her income and expenses. Thus, the AAO lacks sufficient evidence to determine the level of financial challenge the applicant's wife will have if the applicant is prohibited from entering the United States.

The record contains references to emotional hardship the applicant's wife is suffering due to separation from the applicant. _____ provided that the applicant's wife is suffering from depression. However, _____ did not state the basis of her opinion, or otherwise indicate whether she is treating the applicant's wife for depression, or whether she has an ongoing relationship with her. While _____ posited that the applicant's mental health could affect her ability to engage in employment in the future, _____ did not clearly describe the level of the applicant's wife's current functioning, or describe in detail how the applicant's wife's ability to perform daily tasks may be affected. Thus, while the AAO gives careful consideration to the opinion of a mental health professional, the statement from _____ does not show that the applicant's wife is suffering from uncommon emotional consequences.

The applicant's relatives indicated that the applicant's wife and son are experiencing emotional hardship due to separation from the applicant. The AAO acknowledges that family separation can be difficult, involving significant emotional consequences. Yet, the applicant has not distinguished his wife'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 record contains references to hardship to the applicant’s son. Direct hardship to an applicant’s child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in 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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant’s child, it is reasonable to expect that the child’s emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not provided sufficient explanation or documentation to show that hardship to his son is elevating his wife’s hardship to extreme hardship.

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

The applicant has not asserted or shown that his wife would experience extreme hardship should she 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 his wife. 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 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.