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U.S. Citizenship
and Immigration
Services

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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 09 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, 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 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen daughter. He seeks a waiver of inadmissibility in order to reside in the United States with his wife and child.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse as a result of his ongoing inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated June 26, 2006.

On appeal, counsel asserts that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility. Counsel states that the applicant's spouse is suffering from major depression, seeing a psychologist, and missing work. *Counsel's Brief*, dated August 21, 2006.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, a letter from the applicant's spouse's psychologist, a letter from the applicant's spouse's employer, a letter from the applicant's former employer and a letter from the adult education center where the applicant enrolled in classes. The entire record was reviewed and considered in rendering a decision on the appeal.¹

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

¹ The AAO notes that the record contains a statement from the applicant's spouse in Spanish that was submitted at the time the initial waiver application was filed. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the document supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the document is not probative and will not be accorded any weight in this proceeding.

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 application, the record indicates that the applicant entered the United States without inspection in April 1989. On July 11, 2005 the applicant departed the United States. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 11, 2005, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his July 2005 departure from the United States. The applicant is, therefore, 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.

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 alien experiences or his child experiences is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to the applicant's spouse and/or parent. 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 Bureau 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.

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 applicant's spouse states that she and her daughter would suffer extreme hardship if the applicant is not given an immigrant visa. *Spouse's Statement*, dated August 11, 2006. She states that they have a one-year-old daughter, who is very close to her father and that when he comes home from work she is very attached to him. She states that she and the applicant both work and that the applicant has been with the same company for thirteen years. She states that the money they both earn helps them get through their daily lives and that her salary alone could not support her and her daughter. The AAO notes that initially, the applicant's spouse states that she works full time, but later in her statement she states that she earns \$13.50 per hour working part-time because she has to take care of her daughter and cannot afford a baby sitter. She states that without the applicant she would not be able to pay her rent. The applicant's spouse also states that they do not have medical insurance, but does not explain how the applicant's inadmissibility would affect their lack of medical insurance. Finally, the applicant's spouse states that the applicant's inadmissibility would be emotionally devastating for her and her daughter. *Id.* The AAO notes that the applicant's spouse's statement is written as though the applicant has returned to the United States, however, the record does not establish whether he is still in Mexico or has re-entered the United States illegally.

The record also contains a letter from the applicant's spouse's psychologist, [REDACTED] [REDACTED] states that the applicant's spouse is currently under her care and has been seen on July 21, 2006 and on July 27, 2006. *Letter from [REDACTED]* dated July 21, 2006. [REDACTED] states that the applicant's spouse is in counseling and intends to schedule an appointment with a psychiatrist for medication management. She states that due to the applicant's spouse's clinical diagnosis of major depression and the symptoms she is experiencing, it is an extreme hardship for her to not have the support of her husband. [REDACTED] states that she feels it is in the best interest of the applicant's spouse to have her husband with her as well as participate in her counseling. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter does not give a clear description of how the applicant's spouse is suffering. The letter does not indicate what symptoms the applicant's spouse suffers from. The letter does not indicate the source of the applicant's spouse's suffering; whether it is a result of the applicant's inadmissibility or if it was a condition she was suffering from prior to the applicant being found inadmissible. The AAO notes that [REDACTED] last statement advising that the applicant should be with his spouse to participate in her counseling seems to imply that the applicant's inadmissibility is not the source of the applicant's problems. However, the applicant's spouse does not mention her condition in her statement. Therefore, the AAO finds that the information in the letter from Dr. [REDACTED] is incomplete and is of diminished value to a determination of extreme hardship.

In addition to the applicant's spouse statement and the letter from [REDACTED] the record also includes a letter from the applicant's spouse's employer, which issues a warning to the applicant's spouse regarding excessive absenteeism for unexcused absences. *Letter from [REDACTED]* dated May 4, 2006.

The AAO finds that the current record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. The applicant's spouse submitted no documentation to establish the financial problems she claims she will suffer in the

applicant's absence, the emotional hardship she states she will suffer is not adequately supported by the record, and she does not address the possibility of relocating to Mexico to be with the applicant and if relocation would cause her 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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 a letter from the applicant's former employer and documentation showing he enrolled in adult education classes was submitted as evidence of the applicant's good moral character. 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.