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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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APR 05 2010

FILE: [redacted] (CDJ 2004 635 066) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

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).

Perry Rhew
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 under section 212(a)(9)(B)(i)(II) of 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 is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated March 30, 2007.

On appeal, the applicant's spouse asserts that the applicant has nothing in Mexico, her kids need a father, and it is a struggle for a single mother. *Form I-290B, Notice of Appeal to the Administrative Appeals Office.*

In support of these assertions, the record includes statements from the applicant's spouse; W-2 forms for the applicant's mother-in-law and father-in-law; and W-2 forms for the applicant's spouse. 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-
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> > . . . .
> >
> > (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 case, the record indicates that the applicant entered the United States without inspection on or about January 1, 1994, was ordered removed on January 8, 1998, and was physically removed on December 17, 2002. *Notice to Appear*, dated August 16, 1997; *Warrant of Removal/Deportation,* dated March 10, 1998. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he was removed from the United States on December 17, 2002. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 2002 departure and is, therefore, 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. The AAO observes that on February 22, 1997 the applicant's passport was stamped as processed for I-551 temporary evidence of lawful admission for permanent residence, valid until February 22, 1998.[1] *Applicant's passport.* As the applicant is outside the United States seeking admission, the AAO finds that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 family ties to 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.

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[1] The stamp indicates that the applicant's adjustment was based on his prior asylee status. However, the record establishes that the applicant failed to appear for his asylum interview and was, as a result, placed into proceedings on August 16, 1997, which resulted in his removal from the United States on December 17, 2002. A review of USCIS data bases also fails to find that the applicant has ever submitted a Form I-485 seeking adjustment. Accordingly, the stamp in the applicant's passport appears to be the result of error.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth Certificate*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record fails to indicate whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in Mexico and if so, whether she would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. The applicant's spouse notes she and the applicant have two young children together and it is a constant financial struggle, as she is working to support the children by herself. *Statement from the applicant's spouse*, dated June 30, 2005. She states that this is causing her tremendous stress and is upsetting her already high blood pressure. *Id.* The AAO notes that the record fails to include documentation from a licensed healthcare professional regarding any physical or psychological health conditions of the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record includes a W-2 form for the applicant's spouse showing her wages to be $13,596.08 for 2004, an annual income that is significantly below the federal poverty guideline for a family of three. While the AAO acknowledges that the applicant's spouse's income places her below the poverty line, it notes that the record includes a statement from the applicant's spouse and her parents indicating their willingness to jointly support the applicant once he enters the United States. *Support Statement*, dated February 24, 2005. Accordingly, it appears that the applicant and his spouse may rely on financial resources beyond their own. Furthermore, there is nothing in the record to show that the applicant would be unable to contribute to his family's financial well-being from a location other than the United States. The record does not include published country conditions reports regarding the economy and availability of employment in Mexico. The AAO also notes that, while the record includes a birth certificate for a child born in 2001, it does not document that the applicant and his spouse have a second child, as stated by the applicant's spouse.

The applicant's spouse also asserts that her children need their father in the United States so they can form father and son bonds. *Statement from the applicant's spouse*, dated June 30, 2005. While the AAO acknowledges this statement, it notes that the applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children might encounter would affect the applicant's spouse, the only qualifying relative.

The applicant's spouse states she and her family miss the applicant very much. *Statement from the applicant's spouse*, dated June 30, 2005. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.