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

U.S. Citizenship and Immigration Services

H6

[redacted]

APR 0 6 2010

FILE: [redacted] (CDJ 2005 518 185) 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 her last departure from the United States. The applicant is married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their United States citizen child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated January 29, 2007.

On appeal, the applicant's spouse states that the decision was made on the insufficient evidence in the record at the time. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO).*

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; letters from the applicant's spouse's former and current employers; a statement from a family member; and a bill from the City of San Jose. 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 case, the record indicates that the applicant entered the United States without inspection in February 2001 and departed in June 2002. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated February 2, 2006. The applicant, therefore, accrued unlawful presence from February 2001 until she departed the United States in June 2002. In applying for an immigrant visa, the applicant is seeking admission within ten years of her June 2002 departure from the United States. The applicant 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.

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 her child would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he 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 her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Approved Form I-130, Petition for Alien Relative*. He has extensive family ties in the United States, including his mother, three siblings, and nieces and nephews. *Statement from the applicant's spouse*, dated February 24, 2007. The record does not address whether the applicant's spouse has

any additional family members in Mexico. The AAO observes that the applicant's spouse currently resides in Mexico with the applicant and their child. *Id.* He notes that it is difficult for him to reside in Mexico, as his mother, who lives in the United States, is in poor health and in need of constant supervision and medical care. *Id.* He asserts that it is becoming too difficult for his niece to care for his mother as well as her own family. *Id.* A statement from the applicant's spouse's niece indicates that she is no longer able to take care of her grandmother due to emotional and financial reasons. *Statement from* [redacted], dated February 14, 2007. She asserts that her grandmother suffers from several ailments, such as kidney disease, diabetes, and severe arthritis. *Id.* She notes that her grandmother has missed too many doctors' appointments while left in the care of her other children who have not yet grown up. *Id.* While the AAO acknowledges these statements, it notes that the record does not include documentation from a licensed healthcare professional regarding the medical conditions of the applicant's mother-in-law. 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 applicant's spouse also asserts that he has developed health problems as a result of residing in Mexico, including hypertension, Type II Diabetes, and breathing problems. *Statement from the applicant's spouse*, dated February 24, 2007. He also states that he has a back injury, skin rashes from dirty water in Mexico and poor circulation. *Id.* While the AAO acknowledges the applicant's spouse's claims, it again notes that the record fails to include documentation from a licensed healthcare professional regarding these conditions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici, supra.* The applicant's spouse notes that he fears for his safety and that of his family in Mexico due to police corruption and crime. *Statement from the applicant's spouse*, dated February 24, 2007. The AAO notes that the Department of State has issued a travel warning to U.S. citizens for certain cities and areas in Mexico, including Tijuana where the applicant's spouse lives with his family. *Travel Warning*, dated March 14, 2010. Based on its review of the record, the AAO finds the applicant to have provided sufficient evidence to establish that her spouse would experience extreme hardship if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Approved Form I-130, Petition for Alien Relative.* He has extensive family ties in the United States, including his mother, three siblings, and nieces and nephews. *Statement from the applicant's spouse*, dated February 24, 2007. He notes that he is the sole provider for his family and currently assists in paying bills for his mother and his mother-in-law. *Id.* He also asserts he cannot afford to support his family in the United States and Mexico, and if he does not help his mother, she will lose her house and his family's inheritance. *Id.* The record includes a bill from the City of San Jose and a statement from the applicant's spouse's employer that attests to his abilities and future potential but does not address his salary. *Bill statement, City of San Jose; Statement from applicant's spouse's employer*, dated February 13, 2007. There is no additional documentation of the applicant's spouse's expenses or financial obligations, such as rent/mortgage statements, utility bills and credit card bills. Neither does the record provide tax statements, W-2 forms, or earnings statements to establish the applicant's spouse's income. The AAO also notes that the record does not document the applicant's spouse's financial support of his mother in the United States. Accordingly, the AAO

is unable to determine the applicant's spouse's financial status. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici, supra.*

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 his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. 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 her spouse if he were to reside in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he remains in the United States, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) 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.