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 and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY ([redacted]) Date: AUG 17 2010
(CDJ 2005 721 118 relates)

IN RE: Applicant: [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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[redacted]

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 reside in the United States with his U.S. citizen father and lawful permanent resident mother.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated January 23, 2008.

On appeal, counsel for the applicant contends that the applicant's parents will endure hardship should the present waiver application be denied. *Brief from Counsel,* submitted on February 22, 2008.

The record contains a brief from counsel; a copy of the applicant's birth and adoption certificates; copies of birth certificates for the applicant's father and siblings; a copy of the applicant's mother's lawful permanent resident card; a copy of the applicant's parents' marriage certificate; statements from the applicant's father, mother, sister, and brother; a certification from the El Paso, Texas Police Department that the applicant had no criminal records in the jurisdiction as of January 24, 2007, and; documentation regarding the applicant's academic activities in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 June 2000. He reached 18 years of age on February 7, 2004. He did not depart the United States until approximately February 2007. Accordingly, he accrued unlawful presence from February 7, 2004 until February 2007. This period totals approximately three years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his father on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(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).

[redacted] provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 parents will endure hardship should the present waiver application be denied. *Brief from Counsel* at 4. Counsel provides that the applicant's parents require his assistance in the care of their younger son. *Id.* [redacted] that the applicant's parents have invested money in the applicant's education, and that they would incur substantial financial detriment should the applicant be unable to reenter the United States. *Id.*

The applicant's father expresses that he wishes for the applicant to return to the United States to be reunited with his family. *Statement from the Applicant's Father*, undated. He explains that the applicant acts as a leader for his two younger siblings. *Id.* at 1. The applicant's father notes that the applicant can contribute to their household such as taking care of the house, earning income to help

support the family, taking his siblings to school, and performing daily errands. *Id.* He provides that he feels frustrated, stressed, and sad due to the applicant's absence. *Id.* He notes that he wishes for the applicant to continue his education in the United States. *Id.* The applicant's father previously stated that he will have to pay for the applicant's expenses while he is in school. *Prior Statement from the Applicant's Father*, dated February 15, 2007.

The applicant's mother states that she needs the applicant to reside in the United States so that he can help his siblings academically and emotionally. *Statement from the Applicant's Mother*, undated. She provides that her limited ability with the English language renders her unable to effectively assist her two younger children with their school work, but that the applicant tutors them. *Id.* at 1. She indicates that the applicant has been the one to participate in parent-teacher conferences for his younger siblings. *Id.* She adds that her family requires the applicant to drive his younger siblings to and from school and other activities. *Id.* She states that the applicant can pursue a profession in the United States so that he can help fund his siblings' education and assist the family financially. *Id.*

The applicant's younger brother states that he wishes for the applicant to return to the United States so that the applicant can take him to school, play sports with him, help him with homework, and take care of him when their parents are working. *Statement from the Applicant's Brother*, undated.

The applicant's sister states that [redacted] and she wishes for the applicant to reside in the United States so he can help guide her through the process of registering for college, help her with homework, and spend time with her. *Statement from the Applicant's Sister*, undated. She indicates that the applicant can provide her and her brother with food when their parents work late. *Id.* at 1. She expresses that her parents seem sad and lonely since the applicant departed. *Id.*

Upon review, the applicant has not established that his father or mother will suffer extreme hardship if he is prohibited from entering the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not asserted that his mother or father will suffer hardship should they join him in Mexico. The AAO recognizes that departing the United States and returning to Mexico involves numerous issues, inconveniences, and expenses. However, in the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's parents may endure should they join him. In proceedings regarding a 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. Thus, as the applicant has not stated that his mother or father will face challenges should they relocate to Mexico, he has not shown that such relocation will result in extreme hardship.

The applicant has not established by a preponderance of the evidence that his mother or father will suffer extreme hardship should they remain in the United States until he may return. The AAO recognizes that the applicant's family members wish for him to contribute to their household and needs, including helping to care for and support his younger siblings and providing economic support. It is noted that the applicant's sister was 19-years-old as of the date of her statement, and the record does not show that she requires supervision. The applicant has not indicated that his sister is unable to provide transportation or care for their younger brother if needed. While it is understood

that the applicant's family wish to have the applicant assist his siblings with their academic pursuits, the applicant has not shown that his assistance is necessary in order for them to meet their academic goals. Thus, the applicant has not shown by a preponderance of the evidence that his parents will endure significant hardship due to his inability to assist his siblings on a daily basis.

The applicant's father indicated that he must support the applicant abroad while he is studying, suggesting that the applicant's absence creates a financial burden. Yet, the applicant has not provided any evidence or explanation regarding his family's income or expenses, thus the AAO is unable to conclude that they would lack sufficient resources to meet their needs should the applicant remain outside the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. It is evident that the applicant's parents wish to have the applicant continue his education in the United States, and counsel contends that the applicant's parents would incur financial detriment should the applicant be unable to continue his studies. Yet, the applicant has not provided any evidence to show that his parents would face financial loss should the applicant postpone his education. Nor has the applicant shown that he is unable to pursue education outside the United States.

The applicant's father expressed that he is enduring emotional hardship due to the applicant's absence. The AAO acknowledges that the separation of parents from a son often creates significant psychological difficulty. However, the applicant has not shown that his parents are suffering consequences that can be distinguished from those commonly experienced when family members are separated due to inadmissibility. Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan* [redacted] 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.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his mother or father will experience extreme hardship should they remain in the United States. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his parents, as required for a waiver under 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.

As noted above, in proceedings regarding a 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.