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U.S. Department of Homeland Security  
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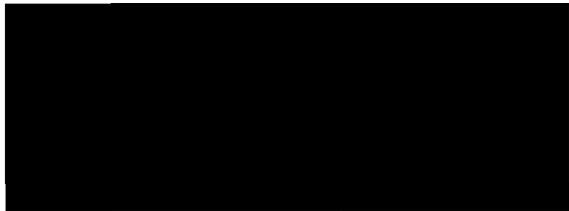


**U.S. Citizenship  
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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date: **JAN 07 2010**

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:  
[REDACTED]

**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 Officer in Charge (OIC), [REDACTED] Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen wife.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Decision of the Officer in Charge*, dated January 8, 2007.

The AAO notes that the OIC denied both the applicant's Form I-601 and Form I-212; however, the applicant filed one appeal and the AAO will only adjudicate the applicant's appeal on the Form I-601 denial. The Adjudicator's Field Manual offers guidance on adjudicating Forms I-601 and Forms I-212 that are filed together.

#### 43.2 Adjudication Processes.

(c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

On appeal, the applicant, through counsel, asserts that USCIS "erred as a matter of law and fact" in denying the applicant's waiver application. *Form I-290B*, filed February 8, 2007. Additionally, counsel claims that the applicant's wife "has shown that she has suffered actual and extreme hardship and also that she faces clear and prospective extreme hardship if [the applicant] is not admitted to the United States."

The record includes, but is not limited to, counsel's appeal brief, declarations from the applicant's wife, and newspaper articles and country reports on Mexico. The entire record was reviewed and considered in arriving at 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 [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 initially entered the United States in 1980 without inspection. In April 1989, the applicant departed the United States. In August 1989, the applicant reentered the United States without inspection. On November 22, 1994, an Order to Show Cause (OSC) was issued against the applicant. On April 18, 1995, an immigration judge ordered the applicant deported *in absentia* from the United States. On October 6, 1995, a Warrant of Deportation (Form I-205) was issued. On November 1, 1995, the applicant was deported from the United States. In November 1995, the applicant reentered the United States without inspection. In January 2000, the applicant departed the United States. On March 3, 2000, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On May 9, 2001, the applicant's Form I-130 was approved. On June 13, 2001, the applicant filed a Form I-212. On December 10, 2003, the Director, California Service Center, denied the applicant's Form I-212. On January 12, 2004, the applicant filed an appeal of the Director's denial of his Form I-212. On September 2, 2004, the AAO dismissed the applicant's appeal. On February 8, 2006, the applicant filed another Form I-212 and a Form I-601. On January 8, 2007, the OIC denied the applicant's Form I-212 and Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until January 2000, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his January 2000 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that if the applicant "is ineligible to immigrate to the United States," the applicant's wife "will suffer extreme hardship essentially because she will likely be forced to either return to the United States without [the applicant] or remain in Mexico to be with him at the expense of her personal safety and general well-being." *Appeal Brief*, page 3, dated March 6, 2007. The AAO notes that counsel submitted newspaper articles and country reports on Mexico; however, the applicant's wife has been residing in Mexico for many years, and other than the applicant's wife's declarations, there is no evidence in the record that she has personally suffered any hardship while residing in Mexico. Counsel states the applicant's wife "shows great actual hardship in the form of severe anxiety and stress." *Id.* at 4. The AAO notes that other than statements from counsel and the applicant's wife, there are no professional psychological evaluations for the AAO to review to determine if the applicant's wife is suffering from any anxiety or whether any anxiety is beyond that typically experienced by others as a result of inadmissibility or removal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel states that if the applicant "is ultimately not admitted into the United States, it will effectively deprive [the applicant's wife] from pursuing her personal and career goals." *Id.* at 4. The AAO notes even though the applicant's wife resides in Mexico, she commutes to the United States for work. Additionally, the AAO notes that the applicant has not established that his wife has no transferable skills that would aid her in obtaining a job in Mexico and that there are no employment opportunities for her there. Furthermore, the AAO notes that the applicant's wife is a native of Mexico who speaks Spanish, and she spent her formative years in Mexico. The AAO notes that it has not been established that the applicant's wife has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she returns to the United States. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. In a declaration dated October 27, 2005, the applicant's wife states she is "virtually the sole source of income to support [their] family." The AAO notes that the applicant is employed as a carpenter in Mexico, and the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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. 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.

Additionally, the AAO finds that since the applicant is ineligible for a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the OIC.

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.