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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

[redacted]

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MAR 0 5 2010

FILE: [redacted] (CDJ 2004 701 356) 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:

[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 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 naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child.

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 November 14, 2006.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO); Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a union letter for the applicant; earnings statements for the applicant and his spouse; loan statements; a telephone bill; an electric bill; a gas bill; a water bill; a recycling bill; a sewer bill; a car insurance bill; a copy of an airline ticket receipt; credit card bills; delinquency notices; medical records for the applicant's spouse and her mother; a counseling report for the applicant's spouse; a medical prescription for the applicant's spouse; a psychological evaluation of the applicant's spouse; and a disciplinary form 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-
> >
> > . . . .
> >
> > (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 March 2001 and voluntarily departed in December 2005. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated December 7, 2005. The applicant, therefore, accrued unlawful presence from May 3, 2001, the date of his 18th birthday, until he departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 2005 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 are 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 child 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.

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 is a native of Mexico. *Naturalization certificate*. Her mother lives in the United States. *Statement from the applicant's spouse*, December 6, 2006. The record does not address whether the applicant's spouse has any familial ties to Mexico. The applicant's spouse states that she takes care of her mother who suffers from diabetes, thyroid problems, high blood pressure, and failing eyesight. *Id.* While the AAO acknowledges the medical documentation submitted with regard to the applicant's spouse's mother, it notes that such documentation is in the form of clinical notes and test results, which the AAO does not have the expertise to interpret. Although the documentation indicates that the applicant's spouse's mother has been treated for diabetes and hyperthyroidism, it does not establish the severity of these medical conditions, how they affect her ability to function or the level of assistance she may require. Further, no evidence in the record supports the applicant's spouse's claim that she is her mother's sole care provider.

A psychological evaluation of the applicant's spouse included in the record notes that it is not feasible for the applicant's spouse and her child to relocate to Mexico given the current social and economic turmoil being experienced in the region of Mexico where the applicant lives. *Statement from* [redacted], undated. The AAO notes this assertion but does not find the record to include documentation, such as published country conditions reports, to establish the current social and economic situation in the applicant's location. 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 also fails to include evidence that would establish that the applicant's spouse would be unable to obtain employment in Mexico. Additionally, the record does not address the applicant's spouse's ability to speak Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. 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 is a native of Mexico. *Naturalization certificate*. Her mother resides in the United States. *Statement from the applicant's spouse*, December 6, 2006. The applicant's spouse states that she is suffering financially. *Id.* She notes that the applicant has not found a job in Mexico and as a result, she has to pay all of the bills. *Id.* The record includes documentation of the applicant's spouse's expenses, as well as collection notices from defaulted bills. *See loan statements, telephone bill, utility bill, gas bill, electricity bill, car insurance bill, travel expense bill, credit card bills, collection notices*. While the record does not document the applicant's inability to obtain employment in Mexico, the AAO acknowledges the documentation of the expenses of the applicant's spouse as evidence of her significant financial difficulties. It notes, however, that economic hardship alone is insufficient to establish extreme hardship. *INS v. Jong H Wang*, 450 U.S. 139 (1981).

The applicant's spouse notes that she cries herself to sleep every night and has been suffering emotional distress due to her separation from the applicant. *Statement from the applicant's spouse*,

dated December 6, 2006. A psychological evaluation included in the record states that the applicant's spouse presents multiple symptoms of depression. *Evaluation from* undated. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is undated and fails to state over what period of time the applicant's spouse was evaluated by the Licensed Clinical Social Worker, to identify the specific symptoms of depression she found the applicant's spouse to evidence or to discuss, with any specificity, the type or extent of the impairment these symptoms are causing. Accordingly, the submitted evaluation does not reflect the insight and elaboration required of a psychological evaluation, thereby rendering the Licensed Clinical Social Worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO does acknowledge, however, the prescription for anti-depressant medication issued to the applicant's spouse. *Medical prescription*, dated December 27, 2006.

The applicant's spouse asserts that she is the only person caring for her sick mother and son who is experiencing emotional problems. *Statement from the applicant's spouse*, dated December 6, 2006. While the AAO acknowledges this assertion, it notes there is nothing in the record to document that the applicant's spouse cares for her mother. Furthermore, the record indicates that her mother helps the applicant's spouse to care for her son. *Id.* The record also fails to include documentation, such as a statement from a licensed healthcare professional, establishing that the applicant's spouse's son has emotional problems. 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 AAO acknowledges the documentation from the applicant's spouse's physician indicating she was diagnosed with a benign thyroid nodule-goiter. *Medical records for the applicant's spouse*, dated September 8, 2005. The record, however, does not indicate that the applicant's spouse is currently experiencing any medical problems.

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. 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.