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U.S. Department of Homeland Security  
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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**MAR 05 2010**

FILE:

[REDACTED]  
(CDJ 2004 670 029)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

IN RE:

APPLICATION:

[REDACTED]  
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 admission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their two United States citizen children.

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 February 16, 2007.

On appeal, counsel for the applicant states that the applicant's family would suffer extreme hardship. Counsel also states that United States Citizenship and Immigration Services (USCIS) did not consider all the evidence submitted for the record. *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, a statement from the applicant; statements from the applicant's children; the applicant's spouse's certificate of business ownership; a telephone bill; a utility bill; a mortgage statement; a cell telephone bill; a credit card bill; statements regarding the applicant's children's academic performance at the elementary school they attend in Mexico; statements from the applicant's spouse; and statements from friends and the pastor at the applicant's spouse's church. The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel asserts that the District Director refused to consider all the evidence in this case prior to reaching a decision on the waiver application. The AAO notes that even if the District Director did fail to consider all the evidence submitted for the record, it is not clear what remedy would be appropriate beyond the appeal process itself. The applicant has in fact supplemented the record on appeal and, as just noted, the AAO has reviewed that evidence in reaching its decision.

The AAO now turns to a consideration of the applicant's inadmissibility and her eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

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 1989 and voluntarily departed in February 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated March 1, 2006. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in February 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her February 2006 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 her children 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 Mexico. *Naturalization Certificate for the applicant's spouse*. The record does not address what family members the applicant's spouse may have in Mexico. The applicant's spouse states that the career options for him in Mexico would be vastly inferior to those in the United States. *Statement from the applicant's spouse*, dated February 22, 2006. While the AAO acknowledges this assertion, it notes the record fails to include documentation, such as published country conditions reports, regarding the economy and employment opportunities in Mexico. 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 states that her children currently live with her in Mexico. *Statement from the applicant*, dated March 8, 2007. She notes that both of her children were born in the United States where they deserve to attend school. *Id.* The applicant's children state that it is difficult being separated from their father. *Statements from the applicant's children*, dated March 8, 2007. The applicant's spouse states that if his children live in Mexico, his dreams of having them go to college may not be realized. *Statement from applicant's spouse*, dated February 22, 2006. While the AAO acknowledges these statements, it notes that the applicant's children are not qualifying relatives for the purpose of this case and the record fails to demonstrate, through documentary evidence, how any hardships they are encountering upon relocation affect their father, the only qualifying relative.

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 he 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 her spouse 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. As previously noted, the applicant's spouse was born in Mexico. *Naturalization Certificate for the applicant's spouse*. The record does not indicate how long the applicant's spouse has resided in the United States, nor does the record indicate whether the applicant's spouse has family members in the United States. The applicant's spouse states that he provides for his family and that it is difficult to maintain two homes, one in Mexico and one in the United States. *Statement from the applicant's spouse*, dated February 20, 2006. He further states

that, as a single parent, he would be unable to raise his children and work full-time. *Id.* The AAO observes that the record includes documentation to establish the applicant's spouse's expenses, including a telephone bill, a utility bill, a mortgage statement, a cell telephone bill, and a credit card bill. *Telephone bill, utility bill, mortgage statement, cell telephone bill, and credit card bill.* While the AAO acknowledges the documented expenses of the applicant's spouse, it notes that the record fails to offer proof of the applicant's spouse's income or that he is supporting the applicant in Mexico. Accordingly, the AAO is unable to determine that the applicant's spouse is experiencing financial hardship in the applicant's absence or that he would be unable to afford childcare to assist him with his parenting responsibilities if his children were to reside with him in the United States. Furthermore, as previously discussed, the record does not include documentation that would demonstrate that the applicant is unable to obtain employment in Mexico and, thereby, reduce any financial burden on her spouse.

The applicant's spouse states that it is important, emotionally and mentally, that his family reside together in the United States. *Statement from the applicant's spouse*, dated February 22, 2006. The AAO notes, however, that the record does not include any documentation from a licensed healthcare professional regarding the psychological effect upon the applicant's spouse of being separated from his family. 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 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.

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.