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

U.S. Citizenship
and Immigration
Services

[redacted]

H6

MAR 30 2010

FILE: [redacted] Office: MEXICO CITY (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. 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 wife and lawful permanent resident parents.

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 September 14, 2006.

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen wife and lawful permanent resident parents will experience extreme hardship if the applicant is prohibited from returning to the United States. *Brief from Counsel*, dated October 12, 2006.

The record contains statements from counsel; statements from the applicant's wife, the applicant's parents, the applicant's brother, aunts and uncles, a friend of the applicant's brother, a reverend, and a church secretary; documentation relating to the applicant's school and sporting activities; a copy of the applicant's marriage license; copies of birth certificates for the applicant, the applicant's wife, and the applicant's daughter; a copy of the applicant's daughter's health insurance card; copies of photographs of the applicant and his family members; a job offer letter for the applicant for the position of plumber; a copy of a lease for the applicant and his wife, and; documentation regarding the applicant's unlawful presence 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 July 1993. He remained until he voluntarily departed in December 2003. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until December 2003, totaling over six years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife 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).

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 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 asserts that the applicant's U.S. citizen wife and lawful permanent resident parents will experience extreme hardship if the applicant is prohibited from returning to the United States. *Brief from Counsel*, dated October 12, 2006. Counsel states that the applicant's parents love and miss the applicant. *Id.* at 2. Counsel provides that if the applicant is refused admission to the United States there will be a permanent separation between him and his wife and family members. *Id.* at 9. Counsel explains that the applicant's wife will suffer emotional hardship if she is separated from the applicant, and that such situation will be detrimental to their marriage. *Id.*

Counsel asserts that the applicant works to support his family, and that his wife depends on him in order to raise their daughter. *Id.* at 4. Counsel states that the applicant's wife will suffer economic detriment if the applicant resides in Mexico, as he will be unable to support her and their daughter. *Id.* at 10. Counsel notes that the applicant has a steady job and health insurance in the United States. *Id.*

Counsel states that the applicant and his wife have numerous family members in the United States, and that the applicant's relatives are close with his wife. *Id.* at 3. Counsel provides that the applicant's and his wife's entire family reside in southern California, and that the applicant and his wife envision their daughter growing up there where they have strong community ties. *Id.* at 8.

Counsel states that the applicant entered the United States in 1993 at age 16, and that he has fully integrated into American culture including performing well in school, engaging in sports activities, attending church services, maintaining steady employment, marrying a U.S. citizen, and having a U.S. citizen daughter. *Id.* at 2-3.

Counsel asserts that the applicant does not have a network of family members in Mexico, and that a permanent move there would be difficult for him. *Id.* at 8. Counsel states that refusing admission to the applicant would deprive the applicant's wife of her livelihood and uproot her from her community. *Id.* at 9. Counsel provides that the applicant's wife will suffer emotionally and psychologically if she relocates to Mexico. *Id.* at 9-10.

The applicant's wife stated that the applicant's absence is affecting her and their daughter emotionally and economically. *Statement from the Applicant's Wife*, submitted December 6, 2005. She expressed concern that their daughter will lack the applicant's guidance. *Id.* at 1. She stated that she has no one to assist her in caring for their daughter, and that she is unable to work full-time as a result. *Id.*

The applicant's mother states that she wishes to have the applicant back in the United States so he can reside near his family. *Statement from the Applicant's Parents*, dated September 24, 2006. She explains that she is a diabetic and that the applicant would take her to her doctor's appointments and the pharmacy. *Id.* at 1. She noted that she began taking medication for high blood pressure once the applicant left the United States. *Id.* She expressed concern for the applicant's hardship in Mexico. *Id.* She stated that the applicant's wife and daughter are suffering emotional hardship due to separation from the applicant. *Id.* at 1-2.

The applicant's younger brother explains that he looks up to the applicant, and that the applicant has been a good husband and father. *Statement from the Applicant's Brother*, dated September 25, 2006. He states that he wishes for the applicant to be permitted to return to the United States so that he can rejoin his family. *Id.* at 1. He provides that he visits the applicant in Mexico, but that he and the applicant endure emotional hardship when he departs. *Id.* at 2.

The applicant provides statements from three of his aunts and three of his uncles who all attest to his good character and strong work ethic. *Statements from the Applicant's Aunts and Uncles*, dated

September 2006. They express that the applicant's wife and daughter will experience hardship if the applicant is prohibited from returning to the United States at the present time. *Id.* They state that the applicant's daughter will suffer developmental challenges if she does not live with both parents. *Id.*

The applicant provides a statement from his brother's girlfriend who states that the applicant has a close relationship with his wife and daughter. *Statement from the Applicant's Brother's Girlfriend*, dated September 25, 2006. She noted that the applicant's daughter has visited him in Mexico, but that such visits will become more difficult once she enters school. *Id.* at 1. She commented that the applicant's family members reside in the same mobile home park and that they regularly gather together in the evenings. *Id.*

Upon review, the applicant has not shown that a qualifying relative will experience extreme hardship if he is prohibited from entering the United States at the present time. As noted above, in order to establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, the applicant must show that his U.S. citizen or lawful permanent resident spouse or parent will endure extreme hardship. Thus, the AAO will examine hardship to the applicant's U.S. citizen wife and lawful permanent resident parents.

The applicant has not shown that his parents will experience extreme hardship if he remains outside the United States. The applicant has not presented any explanation or evidence to show that his parents would experience hardship should they join him in Mexico for the remainder of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant has not shown that his presence in Mexico must result in the separation of him from his parents, as he has not established that his parents would suffer extreme hardship should they relocate to Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's relatives may suffer as a result of denial of his waiver application. In proceedings regarding a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

Counsel states that the applicant's parents love and miss the applicant. However, the applicant has not distinguished his parents' emotional hardship due to separation from the applicant from that which is commonly experienced when family members reside apart 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 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.

The applicant's mother explains that she is a diabetic and that the applicant would take her to her doctor's appointments and the pharmacy. She adds that she began taking medication for high blood pressure once the applicant left the United States. However, the applicant has not provided any medical documentation for his mother to support that she has diabetes or other ailments, or that she requires assistance from family members due to her health. The record shows that the applicant's family members live close together in the same mobile home park, and the applicant has not shown that his mother is unable to obtain assistance from her other children or family members should she require it.

Counsel provides that if the applicant is refused admission to the United States there will be a permanent separation between him and his family members. However, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for 10 years from the date of his last departure from the United States. As he last departed in December 2003, he will no longer be inadmissible under section 212(a)(9)(B)(i)(II) of the Act as of December 2013. Thus, denial of the present waiver application does not constitute a permanent bar to admission, and it will not result in permanent separation of the applicant from his family members.

Based on the foregoing, the applicant has not established that his parents will suffer extreme hardship should he be prohibited from entering the United States at the present time, whether they remain in the United States or relocate to Mexico to join him.

The applicant also has not shown that his wife will suffer extreme hardship should he remain outside the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not presented sufficient explanation or evidence to show that his wife would experience hardship should she join him in Mexico. Counsel notes that the applicant's wife and daughter rely on the applicant to support them financially. However, the applicant has not described his experience in Mexico or shown that he is enduring economic hardship there. The applicant has not asserted that he has endured other hardships in Mexico that might be experienced by his wife. The record shows that the applicant's wife and daughter have visited the applicant in Mexico, yet the applicant has not identified any difficulties they experienced while joining him there.

Counsel provides that the applicant's wife will suffer emotionally and psychologically if she relocates to Mexico, and that refusing admission to the applicant would deprive his wife of her livelihood and uproot her from her community. However, these general statements do not sufficiently distinguish the applicant's wife's challenges, should she relocate to Mexico, from those commonly experienced when an individual relocates abroad due to the inadmissibility of a spouse. Thus, the applicant has not shown by a preponderance of the evidence that his wife will suffer extreme hardship should she join him in Mexico.

The applicant has not shown that his wife will endure extreme hardship should she reside in the United States until he is permitted to return. The applicant presented statements to support that he and his wife share a close relationship, and that his wife is experiencing emotional hardship due to living separately from him. Yet, the applicant has not distinguished his wife's psychological challenges from those commonly experienced when spouses reside apart due to inadmissibility.

The record contains references to hardships experienced by the applicant's daughter. Direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's daughter faces significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that she is suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his daughter's emotional hardship is elevating his wife's challenges to an extreme level.

The applicant's wife states that she is experiencing economic hardship due to the applicant's absence. However, the applicant has not submitted any documentation of his wife's income, resources, or regular expenses. The AAO acknowledges that acting as a single parent with a young child presents economic and scheduling complications due to childcare needs. Yet, the record lacks adequate evidence for the AAO to conclude that the applicant's wife is struggling economically.

Based on the foregoing, the applicant has not established that his wife will experience extreme hardship if she remains in the United States without him.

Counsel contends that the district director failed to give weight to the applicant's remorse for violating U.S. immigration law and did not weigh positive and negative factors. Positive and negative factors are considered in the course of determining whether the applicant warrants a favorable exercise of discretion. However, unless the applicant shows that a qualifying relative will suffer extreme hardship if the waiver application is denied, the Secretary lacks discretion to approve the application. Section 212(a)(9)(B)(v) of the Act. As the applicant did not show that his wife or parents would endure extreme hardship, no purpose would have been served by the district director balancing positive and negative factors.

Counsel asserts that the district director relied on old case law and applied an erroneous standard of extreme hardship. Counsel further contends that the district director did not specifically address the evidence submitted by the applicant. It is first noted that the AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Thus, in the present matter, the AAO has applied the appropriate extreme hardship standard for a waiver proceeding under section 212(a)(9)(B)(v) of the Act, independent of the district director's prior analysis and decision. Additionally, all evidence and explanation provided by the applicant has been carefully reviewed in rendering the present decision on appeal.

The AAO observes that *Matter of Tin*, I&N Dec. 371 (Reg. Comm. 1973), is not relevant to the present matter, and the district director's reference to this case will be withdrawn. *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978), addresses discretionary factors that are not reached in the present matter, as the applicant has not established that a qualifying relative will experience extreme hardship.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife or parents, as required for a waiver under section 212(a)(9)(B)(v) of the Act. As noted above, 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 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.