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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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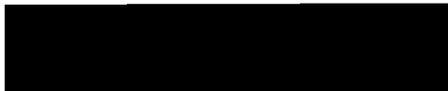
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(CDJ 2005 799 139)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: MAY 03 2010

IN RE:



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:

SELF-REPRESENTED

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 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 June 16, 2007.<sup>1</sup>

On appeal, the applicant's spouse states that she would like to have her husband back home with their family. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; medical records for the applicant's spouse; a brief; and a court order regarding custody of the applicant's spouse's daughter from a prior relationship. 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.

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<sup>1</sup> The AAO notes that the District Director also denied the applicant's Form I-212, Application for Permission to Reapply For Admission into the United States After Deportation or Removal, as a matter of discretion based on his denial of the Form I-601, Application for Waiver of Grounds of Inadmissibility.

(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 April 1999 and was removed on June 28, 2004. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated May 19, 2006; *U.S. Citizenship and Immigration Services (USCIS) records*. In his consular interview, the applicant stated that he had been arrested for domestic violence and removed to Mexico. *Id.* The applicant accrued unlawful presence from May 19, 2000, the date of his 18<sup>th</sup> birthday, until he was removed from the United States on June 28, 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 2004 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.<sup>2</sup>

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 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. 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).

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<sup>2</sup> The AAO observes that record indicates that the applicant pled guilty to one count of misdemeanor domestic violence and was confined for 12 days and placed on probation for 12 months. The record does not include additional documentation, such as court dispositions or criminal records. The AAO will not analyze whether the applicant's crime constitutes a crime involving moral turpitude and renders him inadmissible under section 212(a)(2)(A) of the Act. The AAO notes that the extreme hardship analysis to the applicant's spouse under section 212(h) of the Act would be the same as that conducted under section 212(a)(9)(B)(v). Even if the AAO were to find that the applicant's children would suffer extreme hardship under section 212(h) of the Act, the applicant is still inadmissible under section 212(a)(9)(B)(i)(II) and must demonstrate that his spouse would suffer extreme hardship under section 212(a)(9)(B)(v). As a finding of extreme hardship under section 212(a)(9)(B)(v) of the Act would also establish the applicant's eligibility for a waiver of any inadmissibility under section 212(a)(2)(i)(I) of the Act, an extreme hardship analysis under section 212(h) is unnecessary.

*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 was born in the United States. *Approved Form I-129F, Petition for Alien Fiance(e)*. Her immediate family lives in Michigan and she resides with her mother and father. *Statement from the applicant's spouse*, dated June 6, 2006. She does not speak Spanish and she believes her lack of language abilities would make it difficult for her to communicate, work, or seek further education in Mexico. *Id.* The applicant's spouse has joint custody of a daughter from a previous relationship. *Referee Recommendation and Order, State of Michigan, Circuit Court for the County of Antrim*, dated February 19, 2004. She and the father of her daughter share joint legal and physical custody of the child, with parenting time alternating on weekends. *Id.* She notes that the father of her child has legal rights and would not permit her to take their child to Mexico to live. *Statement from the applicant's spouse*, dated June 6, 2006. When looking at the record before it, particularly the applicant's spouse's lack of familial ties to Mexico, her inability to speak Spanish and its effect on her adjustment to Mexico, and the documented joint custody agreement affecting her daughter, the AAO finds 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 was born in the United States. *Approved Form I-129F, Petition for Alien Fiance(e)*. Her immediate family lives in Michigan and she resides with her mother and father. *Statement from the applicant's spouse*, dated June 6, 2006. The record includes medical documentation showing the applicant's spouse suffers from dysplasia. *Medical records*, dated February 6, 2001. The applicant's spouse notes these are pre-cancerous cells that she needs to have biopsied every three months. *Statement from the applicant's spouse*, dated June 6, 2006. While the AAO acknowledges this medical documentation, it notes that, at the time of the applicant's appeal, these reports were more than six years old and, therefore, fail to provide the current condition of the applicant's spouse's health. Further, they fail to indicate that being separated from the applicant is affecting the applicant's spouse condition, that her condition affects her ability to function independently or that her parents, with whom she resides, are unable to provide her with whatever care she may need. The record also fails to document any expenses associated with her medical care. The applicant's spouse states she has had a difficult time

with jobs, finding a home, and with income. *Statement from the applicant's spouse*, dated July 17, 2007. While the AAO acknowledges these assertions, it notes that the record fails to include documentation, such as mortgage/bill statements, utility bills, or credit card statements, regarding the expenses of the applicant's spouse, nor does the record include earnings statements, W-2 forms, or tax statements for the applicant's spouse showing her annual salary. Furthermore, there is nothing in the record that establishes that the applicant would be unable to contribute to his family's financial well-being from a location other than the United States. The record fails to include published country conditions reports regarding the economy and availability of employment 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's spouse states that it seems as if her life has gone downhill since her separation from the applicant. *Statement from the applicant's spouse*, dated July 17, 2007. 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.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) 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.

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.