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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
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Services

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HC

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date:
CDJ 2005 535 079

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:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 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 again seeking admission 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.

In a decision dated November 23, 2007, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his continued inadmissibility. The application was denied accordingly. *See Decision of District Director* dated November 23, 2007.

On appeal, the applicant's spouse provided a statement on behalf of the applicant in the Notice of Appeal (Form I-290B), as well as a letter. The applicant's spouse asserts that she is experiencing emotional, psychological and financial hardships as a result of the applicant's inadmissibility. In addition, the applicant's spouse indicates that she has health issues and that the applicant's absence is affecting her care.

The record contains Biographic Information (Form G-325A) regarding the applicant, an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a letter written in Spanish from the applicant's spouse without a translation, a decision from the District Director, a Form I-290B with a statement from the applicant's spouse, an additional letter in English from the applicant's spouse and a letter from the doctor of the applicant's spouse.

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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). 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).

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450

U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record indicates that the applicant entered the United States without inspection in July of 2003, and remained until May of 2006 when he voluntarily departed. The applicant thus accrued unlawful presence from when he entered the United States in July 2003 until May 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The applicant's qualifying relative in this case is his spouse, who is a United States citizen.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative spouse of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Mexico and in the event that she remains in 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.

The evidence submitted relating to the potential hardships facing the applicant and his family includes the statement within the Form I-290B, the letter from the applicant's spouse written on appeal and a letter from her doctor. Although the applicant also provided a letter from his spouse in the initial waiver application, Form I-601, this letter was written in Spanish and the requisite translation was not provided. 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the letter from the applicant's spouse written in Spanish without a translation cannot be considered in analyzing this case.

In the applicant spouse's statement in the Form I-290B and in her letter, she states that she is experiencing emotional hardship and psychological anxieties, such as stress and difficulties sleeping, as a result of her separation from the applicant. She also expresses financial concerns relating to her expenses including the cost of their home. In addition, she states that she is suffering from health issues and that she needs to take pills and to "follow the instructions from the doctor." It also appears that she may be suffering from depression, as she indicates she is "suicidal." However, the documentation provided relating to the applicant spouse's health problems consists of a brief letter from her doctor. The doctor's letter only indicates that the applicant's spouse suffers from "high blood pressure" and states that "it is medically necessary that [the applicant] be allowed to come into the United States to help her." However, the letter does not explain why it is necessary for the

applicant to live in the United States, or whether the applicant's spouse could live in Mexico with the applicant.

The AAO finds that the applicant's spouse is not experiencing extreme hardship as a consequence of being separated from the applicant. While she clearly is suffering due to the separation from her family emotionally and possibly financially (although no additional evidence was provided to corroborate this contention), these hardships are not outside the usual difficulties encountered when a family member is removed.

The AAO likewise finds that the applicant has not met his burden in showing that his spouse would suffer extreme hardship if she relocated to Mexico. The record contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant resides or other locations where he and his spouse would likely reside. If the applicant's spouse relocated to Mexico, she would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting two households. The applicant's spouse would likely lose her employment if she left the United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning his spouse's current employment and available employment opportunities in Mexico. The record does not indicate whether the applicant's spouse would encounter any hardships associated with adjusting to a foreign culture. He has not addressed whether he has family ties there, and the AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant's spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.