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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

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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ST. PAUL, MN

Date:

JUN 17 2009

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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota. 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 seeking readmission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen, has two U.S. citizen children and seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, at 4, dated February 25, 2008.

On appeal, counsel states that the field office director failed to examine all of the submitted evidence and selectively focused on sections of the evidence. *Form I-290B*, at 2, received March 19, 2008. Counsel also states that the field office director should have issued a request for evidence or a notice of intent to deny prior to issuing his decision, the field office director ignored the updated information provided and the decision should be vacated to allow the introduction of current information. *Brief in Support of Appeal*. The AAO notes that the applicant provided new evidence on appeal and it will consider all of the evidence submitted in its *de novo* decision.

The record includes, but is not limited to, counsel's brief, evidence of the applicant's spouse's pregnancy; letters of support; evidence of the applicant's spouse's separation from Preco, Inc.; online information on medication; country conditions information on Mexico and various bills for the applicant and his spouse.

The AAO notes counsel's assertion that the field office director erred in denying the application without first issuing a notice of intent to deny or a request for evidence and that the applicant should be allowed to introduce updated information concerning his eligibility for a waiver. However, the field office director is not required to issue a request for further information or a notice of intent to deny in every potentially deniable case. If the field office director determines that the initial evidence supports a decision of denial, the regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation. Further, even if the field office director had committed a procedural error by failing to solicit further evidence or issue a notice of intent to deny, it is not clear what remedy would be appropriate beyond the appeal process itself, which has given the applicant the opportunity to supplement the record.

The record reflects that the applicant entered the United States without inspection on September 1, 1989; departed the United States in December 2000; entered the United States with a border crossing card on December 23, 2000; was granted voluntary departure on June 24, 2003; departed the United States on October 22, 2003 pursuant to his voluntary departure order; entered the United States on November 18, 2003 with a B-2 visitor's visa and has not departed since his last admission. The

applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until December 2000, when he departed the United States. The applicant is 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 and seeking readmission within ten years of his December 2000 departure from the United States.

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.

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 or his children experience is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. Counsel states that the applicant's children have not been exposed to Mexican culture, they do not speak Spanish, the applicant and his spouse do not have a support

system in Mexico, and the applicant's spouse would experience extreme financial hardship in Mexico. *Brief in Support of Appeal*, at 8-9. Counsel states that the applicant's spouse is unsure that she would be able to find a job in Mexico, the couple does not have family in Mexico and there would be no one to care for their children if both are working, and the applicant's spouse's family provides babysitting assistance in the United States. *Id.* at 10. Counsel states that the applicant's spouse has a long history of suffering from migraines, she takes Imitrex for her condition, her condition has worsened due to her job difficulties and the applicant's waiver denial, and it is uncertain whether she would be able to find or afford her migraine medication in Mexico. *Id.* at 10-11.

The applicant's spouse states that her mother, father and two brothers reside in Wisconsin, she is very close to her family members, it would be very expensive to call them, it would be hard on everyone if her contact were reduced so severely with her parents, it would cost a lot to get child care and the quality of care would not be as good as in the United States, it would be a hardship to deprive her mother of contact with her grandchildren, she is not fluent in Spanish, she does not know if she could obtain immigration status in Mexico, and education and medical care are better in the United States than in Mexico. *Applicant's Spouse's Statement*, at 1-3, dated October 28, 2005. The applicant's spouse states that the crime in Mexico poses a risk, it will be difficult for her to obtain employment in Mexico, the U.S. State Department discourages women from traveling alone, kidnapping is a problem, and she would stand out as a foreigner who may have cash. *Id.* at 5. The record includes country conditions information on Mexico which details safety and security issues, high crime levels in metropolitan areas, problems for women traveling alone, alarming rates of kidnapping, and that adequate medical care can be found in all major cities. *U.S. Department of State, Consular Information Sheet: Mexico*, at 3-4, 6, dated July 26, 2005. However, the record does not include sufficient supporting evidence of the proposed financial and medical hardship that would be experienced by the applicant's spouse, the inability of the applicant's spouse to obtain immigration status in Mexico, or of how the applicant's children's hardship would affect the applicant's spouse. The record also fails to establish that the applicant would be unable to obtain employment and support his family in Mexico. The AAO notes the generalized information on employment and minimum wage provided by the section on Mexico in the U.S. Department of State Country Reports on Human Rights Practices, dated February 28, 2005, but does not find the record to establish that the applicant would be limited to earning the minimum wage. Going on record without supporting documentation will not meet the applicant's burden of proof in 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 finds that the record does not include sufficient evidence to establish that the applicant's spouse would experience extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's children would suffer if they are raised without the applicant, the applicant's children are very attached to him, and the applicant's spouse would suffer hardship caring for the children's emotional and physical well-being by herself. *Brief in Support of Appeal*, at 8. Counsel states that the applicant and his spouse cannot afford to pay for daycare, the applicant earns twice as much as his spouse and is the primary income

earner in the household, the applicant's spouse will likely have to apply for welfare benefits, she would be unable to sustain her monthly obligations of over \$2000 and she will essentially be rendered bankrupt without the applicant's income. *Id.* at 9-10. Counsel states that if the applicant's spouse remained in the United States without her spouse, she would be unable to afford her medication and would suffer complications as a result of her migraines. *Id.* at 10-11. The applicant's spouse details her activities with the applicant and states that it would be very difficult to raise her son without the applicant. *Applicant's Spouse's Statement*, at 1-2. The applicant's spouse states that the applicant is a wonderful provider for the family, she would not be able to maintain her standard of living without him and she would be stuck in their new lease, which she cannot afford. *Id.* at 4. The record includes numerous letters from family members detailing the closeness of the applicant and his spouse. However, the record does not include sufficient supporting evidence of the claimed financial and medical hardships, or of other forms of hardship that would be experienced by the applicant's spouse. Moreover, as previously noted, the record does not establish that the applicant would be unable to obtain employment in Mexico and financially assist his family from outside the United States. The AAO finds that the record does not include sufficient evidence that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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.