

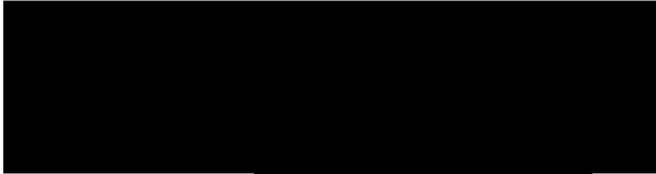
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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**MAR 03 2009**

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

(CDJ2004 614 310)

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, 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 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 United States citizen child.

The Officer in Charge 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 Officer in Charge*, dated April 10, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that he had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; an earnings statement for the applicant's spouse; bill statements; a statement of payment for childcare; criminal records for the applicant; and a psychological evaluation for the applicant. 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.

(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 January 1996 and departed the United States voluntarily in April 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated June 23, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in April 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his April 2005 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 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 upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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 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 travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address how the applicant's spouse would be affected if she were to reside in Mexico. The record fails to address whether the applicant's spouse has familial and

cultural ties in Mexico. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The record does not address what employment opportunities the applicant's spouse would have in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living there. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would be affected by relocation and whether she would be able to receive adequate care in Mexico. 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 Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The applicant's spouse states that she does not have anyone but the applicant. *Statements from the applicant's spouse*, dated May 6, 2006 and undated. She notes that she works from 6:00am to 4:30pm and that once her son starts kindergarten in the fall, she is going to encounter a bigger burden in getting him to and from school. *Statement from the applicant's spouse*, dated May 6, 2006. She asserts that her obligations to her child will cause her to lose a lot of time from her work. *Id.* In an undated statement, the applicant's spouse reports that she has to pay her neighbor to take care of her son because she has no one who can help her. *Statement from the applicant's spouse*, undated. The record contains a statement indicating a payment of \$70 a week by the applicant's spouse to [REDACTED] to watch the applicant's son. *Statement of payment signed by the applicant's spouse and [REDACTED]*, undated. Also included in the record are car insurance, utility, mortgage, and telephone bills documenting the expenses of the applicant's spouse. *Bill statements for the applicant and his spouse*. The applicant's spouse states that when there is only one parent paying for the expenses, it gets very hard on that person. *Statement from the applicant's spouse*, undated. She notes that the applicant has found work in Mexico, but that he makes very little money and what he sends to her is just not enough. *Id.* The record documents that the applicant's spouse earns a net pay of \$873.34 every two weeks. *Earnings statement for the applicant's spouse*, dated April 30, 2006.

While the AAO acknowledges that the applicant's spouse is experiencing financial hardship as a result of the applicant's inadmissibility, it also notes that the applicant's annual salary is approximately \$30,000, well above the federal poverty guidelines for a family of two. Moreover, although the applicant's spouse states that the applicant is unable to send her enough money from Mexico to meet their expenses, the record does not document the amount of money that the applicant is able to send to his spouse or that it is insufficient to meet her financial needs. 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 also observes that economic hardship commonly results from removal or inadmissibility and that the record before it does not include sufficient evidence to distinguish the applicant's spouse's economic situation from that of other individuals whose spouses are barred from admission to the United States. The applicant's spouse's inability to maintain her current standard of living does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

The applicant's spouse notes that she has been with the applicant for eight years and that the applicant is her husband, her son's father, and her best friend. *Statement from the applicant's spouse*, dated June 22, 2005. The AAO acknowledges the emotions of 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.