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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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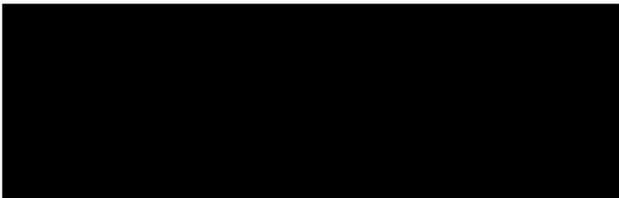
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 08 2010**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).


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 inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act, (INA, the Act), 8 U.S.C. 1182(a)(1)(A)(iii), as an alien classified as having a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. In addition, the applicant was found inadmissible 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. The applicant sought waivers of inadmissibility under sections 212(g)(3) of the Act, 8 U.S.C. 1182(g)(3) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. 1182(a)(9)(B)(v) of the Act, so that he may reside in the United States with his U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v) of the Act and consequently, denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.¹ *Decision of the District Director*, dated November 21, 2006.

On appeal, counsel for the applicant submits a brief, dated January 17, 2007. The entire record has been reviewed in reaching this decision.

Section 212 states, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may

¹ The AAO notes that the district director, in his decision, did not reference whether the applicant had met the requirements of a waiver under section 212(g)(3) of the Act.

pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) reads, in pertinent part:

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

Based on a review of the record, the AAO concludes that the applicant met the requirements of a waiver under 212(g)(3) of Act. *See Letter from [REDACTED] Refugee and Migrant Health Branch, Division of Global Migration and Quarantine, National Center for Infectious Diseases, dated January 4, 2006 and Form CDC 4.422-1, Statements in Support of Application for Waiver of Inadmissibility.* As such, this ground of inadmissibility no longer needs to be addressed. With respect to the district director's finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the AAO notes that the applicant entered the United States without authorization in January 1993 and did not depart until June 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in June 2005. The district director correctly found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant is eligible to apply for a section 212(a)(9)(B)(v) waiver.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The first step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would encounter extreme hardship if she relocated abroad to reside with the applicant due to his inadmissibility. With respect to this criteria, the applicant’s spouse asserts that she would suffer emotional, physical and financial hardship. In a declaration, she states both her children have been prescribed nebulizers for daily use to treat their respiratory problems, but were they to relocate to Mexico to reside with the applicant, they would not be entitled to public health assistance. The costs of their medical treatment would be cost prohibitive, thereby causing the children, and by extension, the applicant’s spouse, emotional hardship. She also notes that her children speak English at home and a relocation abroad would cause them to encounter a language and cultural barrier that would cause

her hardship. In addition, she contends that she and/or the applicant would not be able to find gainful employment in Mexico, thereby causing her financial hardship. She further notes that her mother is a diabetic who was recently laid off and moved in with her due to a loss of her income and health benefits. The applicant's spouse asserts that were she to relocate abroad to reside with the applicant, she would suffer emotional hardship as she would not be able to care for her mother on a daily basis. Finally, the applicant's spouse contends that she is a co-owner of a cleaning service with her father and were she to leave the position, the company would undergo stressful changes, as she spends substantial amounts of time and energy making contacts and developing contracts; her departure would be a major sacrifice to the company. *Affidavit of* [REDACTED], dated November 14, 2005.

No documentation has been provided from the applicant's children's physician, detailing their current medical conditions, the short and long-term treatment plan, and what specific hardships they would encounter were they to relocate to Mexico. Nor has it been established that were they to relocate to Mexico, they would not be able to receive appropriate medical treatment. Moreover, no documentation has been provided establishing that the applicant and/or his spouse would be unable to obtain gainful employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

In addition, with respect to the applicant's spouse's mother's medical condition, her unemployment and the loss of her health insurance, the record establishes that the applicant's spouse's father, [REDACTED], earned over \$100,000 in 2004. *See Form I-864, Affidavit of Support*. It has not been established that he would be unable to care for the applicant's spouse's mother should the need arise. Nor has financial and medical documentation been provided from the applicant's spouse's mother, to establish that her financial and physical well-being depend exclusively on her daughter's physical presence and daily support. Finally, regarding the business referenced by the applicant's spouse, the record establishes that the applicant's spouse's father owns the business and the applicant's spouse is an employee. *Letter from* [REDACTED], dated May 27, 2005. It has not been established that the applicant's spouse's absence would cause the company extreme hardship and by extension, hardship to herself, the only qualifying relative in this case.

Extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant resides abroad based on the denial of the waiver request. The applicant's spouse asserts that she would suffer hardship as she would have to care for her two children and her mother, while maintaining full-time employment, without her husband's daily support and involvement. In addition, she notes that she recently purchased a home, but without her spouse's physical presence, it will be difficult for her to maintain it and stay current on the mortgage payments. Finally, she contends that without her spouse's presence, she would have to start using daycare and most likely work less hours, to help care for her children. *Supra* at 2.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. Nothing in the record indicates that the emotional hardship the applicant's spouse will experience is beyond that experienced by others in the same situation.

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

No documentation has been provided establishing the applicant's spouse's current expenses, assets and liabilities, to establish financial hardship. Nor, as noted above, has any financial documentation been provided with respect to the applicant's spouse's mother, to establish her financial hardship and by extension, the applicant's spouse's financial hardship in having to help care for her. Alternatively, it has not been established that the applicant's spouse father would be unable to assist the applicant's spouse and/or her mother financially, should the need arise. In addition, the record fails to establish what specific contributions the applicant made to the household prior to his departure from the United States, to establish that his physical absence is causing extreme financial hardship to his spouse. Moreover, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording him the opportunity to assist his spouse with respect to their finances. While the applicant's spouse may need to make adjustments with respect to the family's financial situation, the maintenance of the household and the care of her children and mother while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme emotional and/or financial hardship due to the applicant's inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.