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U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: PHOENIX DISTRICT OFFICE Date: OCT 22 2004

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unauthorized
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Phoenix. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record reflects that the applicant is the spouse of a U.S. citizen.

The district director found that the application for waiver contained no supporting evidence to establish extreme hardship. The record shows that the applicant's counsel was notified upon filing of the application for waiver that the application lacked required initial evidence of extreme hardship and that counsel "insisted on filing skeleton I-601." *Notes of District Office Employees* (affixed to Form I-601) (May 1, 2003). The application was subsequently denied in accordance with 8 C.F.R. § 103.2. This section of the regulations provides, in pertinent part:

(b) *Evidence and processing*—(1) *General*. An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. . . .

(8) . . . If the application or petition was pre-screened by the Service [now USCIS] prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. . . .

8 C.F.R. § 103.2(b)(1), (8).

On appeal, counsel makes several contentions. Counsel contends: the Phoenix District Office failed to timely adjudicate a Motion to Reopen the applicant's first application for adjustment of status to that of a lawful permanent resident; "[n]othing in the INA or regulations requires that the I-601 waiver be filed with all the supporting documents when it relates to particular section that the applicant was denied under that provision"; and "the applicant requests the opportunity to be determined inadmissible by the BCIS and then be given the opportunity to respond by filing the appropriate waiver . . . with supporting documentation." Form I-290B, *Notice of Appeal to the Administrative Appeals Unit (AAU)* (July 30, 2003). Additionally, counsel asserts, "the applicant believes that her husband and children will suffer extreme hardship" if she is refused admission. *Id.* No additional evidence is submitted in support of the appeal. Counsel's letter, attached to the appeal, indicates, "[a]s [redacted] has been married for over 10 years with her husband, I believed that she did not have to provide an affidavit of support but only proof that her husband had earned wages during the qualifying periods based on his social security records. I submitted this information to Officer Cruz and waited for response . . . I am now filing an appeal of your denial but would certainly like to know if an appeal is necessary under the circumstances." *See* Form I-290B.

USCIS notes that, although counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence.

Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

The record reflects that the applicant filed for adjustment of status on October 9, 1998. The applicant was interviewed in connection with the adjustment application on August 23, 2001. An affidavit of support was submitted on August 30, 2001. On December 14, 2001, the district office issued to the applicant a Notice of Intent to Deny her application for adjustment, indicating that she required a waiver of inadmissibility, due to unlawful presence in the United States, and that she also required a properly filed, adequate affidavit of support. *Letter of the District Director* (December 14, 2001). The letter indicated that the applicant had 12 weeks to submit the required documentation. *Id.*, at 3. Twelve weeks from the issuance of the letter was March 8, 2002. On February 25, 2002, the applicant submitted an application for waiver of inadmissibility. No new affidavit of support was submitted at that time. On April 19, 2002, the adjustment application was denied for failure to submit an adequate affidavit of support. *Decision on Application for Status as Permanent Resident* (April 19, 2002). On the same date, USCIS denied the applicant's request for a waiver of inadmissibility. The reasons the district director found the August 30, 2001 affidavit of support inadequate are not evident in the record.

On September 2, 2002, counsel filed a Motion to Reopen proceedings on the application for adjustment. *Letter of Emilia C. Bañuelos* (filed September 2, 2002). Counsel subsequently withdrew the motion. *Letter of Emilia C. Bañuelos* (April 29, 2003). On May 1, 2003, counsel filed a new application for adjustment of status, affidavit of support, and "skeleton" request for waiver of inadmissibility. As noted above, the I-601 was denied on July 3, 2003 for failure to submit initial evidence.

The authority of the AAO to adjudicate appeals was delegated by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See Department of Homeland Security Delegation No. 01-50.1* (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as it existed on February 28, 2003). Therefore, the AAO has jurisdiction and authority only to review the appeal of the denial of the waiver of inadmissibility and, because no appeal was filed with respect to the April 19, 2002 denial of the prior I-601, only the I-601 application that was filed on May 1, 2003 is relevant to these proceedings.

Regulations governing these proceedings, 8 C.F.R. § 103.3(a)(v), state in pertinent part:

(v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

With respect to the denial of the waiver application filed on May 1, 2003, counsel has failed to submit any supporting evidence or argument. The appeal makes only a conclusory statement that her husband and child will establish extreme hardship if she is denied adjustment of status. The AAO finds that counsel has failed to identify any erroneous conclusion of law or fact in the district director's decision to deny the application for waiver.



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The applicant's notice of appeal will therefore be dismissed pursuant to 8 C.F.R. § 103.3(a)(v).

ORDER: The appeal is dismissed.