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U.S. Department of Homeland Security
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MAIL STOP 2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO (SANTO DOMINGO SUB OFFICE) Date: DEC 18 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 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.

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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic who, on May 7, 2008, admitted under oath to a consular officer that he had entered the United States without authorization on October 26, 1999 and had not departed the United States until 2002. The applicant thus accrued unlawful presence from October 26, 1999 until his departure in 2002. The applicant 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. The applicant seeks a waiver of inadmissibility in order to reside with his naturalized U.S. citizen spouse in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated August 28, 2008.

In support of the appeal, counsel for the applicant submitted a brief, dated September 26, 2008 and referenced exhibits. In addition, on November 19, 2008, the AAO received additional evidence in support of the appeal from counsel, namely, a letter from the applicant's ex-wife, dated September 12, 2008, and laboratory results presumably relating to the applicant. Counsel did not include a letter explaining the probative value of these documents with respect to the instant appeal.[1] The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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-

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[1] 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services (CIS)] 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.

The AAO notes that the laboratory results referenced above are in Spanish. Because counsel failed to submit a certified translation of the laboratory results and/or a letter from the applicant's treating physician, written in English or translated pursuant to 8 C.F.R. § 103.2(b)(3), detailing the significance of said results, the AAO cannot determine whether said evidence supports the applicant's claims for a waiver. As such, the laboratory results can not be evaluated for purposes of the instant appeal.

. . . .

> (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…

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, his friends, or his extended family cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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.

> 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).

The applicant's U.S. citizen spouse first asserts that she is experiencing emotional/psychological hardship due to the applicant's spouse's inadmissibility. As stated by the applicant's spouse,

> It breaks my heart knowing what extreme and unkind hardships that will be created if our family continues separated. I am currently having high anxiety levels that I am doing my best to maintain with therapy sessions and medications. I also have high level of stress. I suffer from headaches, back pains, and pain in my right arm. Because my high level of anxiety, I also suffer from insomnia. Even with medication I find that I can not function as a normal person should, I am sleepless almost everyday, which impedes me from carrying out my daily functions as employee. I continue so [sic] suffer severe stress and anxiety, honestly, have wished to die in order not to deal with the possibility of losing my family....

Letter from [redacted] dated June 14, 2008.

In support of the applicant's spouse's statements, a letter has been provided by [redacted], M.D. [redacted] states as follows:

> [redacted] [the applicant's spouse] is under medical treatment at our facility for Severe Depression, Anxiety, Insomnia, and Palpitations.
>
> The patient recently has been started on Anti depressive medications due to her condition and loneliness. She also misses her husband very much who lives in the Dominican Republic....

Letter from [redacted], *Wadsworth Medical P.C.,* dated June 10, 2008.

The record does not establish [redacted]'s qualifications to make evaluations of mental health issues nor how these conclusions regarding the applicant's spouse were reached.. As such, his letter does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the letter's value to a determination of extreme hardship. Moreover, although the applicant's spouse references suicidal ideations in her statement, no documentation has been provided by [redacted] and/or the applicant's spouse's treating mental health physician that references these ideations and/or provides a detailed outline of the severity of the situation and the short and long-term treatment plan. Finally, it has not been established that the applicant's spouse is unable to visit the applicant in the Dominican Republic, her home country, on a regular basis.

The record establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's inability to reside in the United States. Although the depth of concern and anxiety over the applicant's immigration status 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, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212 (a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The applicant's spouse further references the financial hardship she is suffering due to the applicant's inadmissibility. As she states,

> Without my husband, I am missing a huge financial part of our household....

Id. at 2.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy).

No documentation regarding the applicant and his spouse's financial situation, including current income and expenses, has been provided to establish that the applicant's inadmissibility has caused the applicant's spouse extreme financial hardship. Moreover, it has not been established that the applicant is unable to obtain gainful employment in the Dominican Republic, thereby allowing him to assist his spouse with respect to the U.S. household expenses. The AAO notes that the applicant and his spouse married four years after the applicant departed the United States; it has not been established that the applicant's spouse has ever depended on the applicant for financial assistance and thus, it has not been established that his inadmissibility would have any impact on her financial viability. 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)).

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, psychological and/or financial hardship due to the applicant's inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse asserts as follows:

> [O]ur health, employment and educational opportunities, economic, solvency and familial ties prevent us from living in the Dominican Republic....
>
> It would be so devastating to relocated [sic] to the Dominican Republic and cause such severe hardship. To continue having my family separated, not be able to financially support my family, loose all assets and loose health benefits for my family....

Id. at 1-2.

No documentation has been provided to corroborate the applicant's spouse's statements with respect to the hardships she would face were she to relocate to the Dominican Republic, her country of birth. As previously referenced, assertions without corroborating documentation do not suffice to establish extreme hardship.

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 return to 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 to the Dominican Republic, her native country, to accompany 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 under section 212(a)(9)(B)(v) of the Act, 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.