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

H3

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: FEB 20 2009

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 Officer in Charge, Ciudad Juarez, Mexico, and appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in September 1991. She did not depart the United States until April 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until April 2005, when she departed the United States. The applicant was thus 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. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to reside in the United States with her U.S. citizen spouse.

The officer in charge 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated January 30, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated February 27, 2006 and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Counsel, on appeal, makes numerous references to the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. Counsel further asserts that the applicant is seeking a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). *See Brief in Support of Appeal,* dated February 27, 2006. The AAO notes that the applicant's inadmissibility is not based on a conviction for a crime of moral turpitude, despite counsel's assertions to the contrary. As noted on the Form I-601, executed by the applicant, and in the decision of the officer in charge, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, as noted above. As such, any references made by counsel with respect to the applicant's request for a waiver under section 212(h) will be disregarded.

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...

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. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, her children, her U.S. citizen spouse's children and/or the grandchildren 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 contends that he will suffer emotional hardship if the applicant's waiver is denied, due to the long and close relationship they have. *Affidavit of* [redacted] dated November 22, 2005. In addition, counsel asserts that the applicant's spouse is suffering extreme financial hardship due to the applicant's absence, as he is unable to pay his bills on time, numerous utilities have been disconnected, and he is being evicted. *Supra* at 18.

It has not been established that the emotional hardship suffered by the applicant's spouse due to the applicant's inadmissibility is extreme. Moreover, the record indicates that numerous relatives of both the applicant and her spouse reside legally in the United States, including siblings, children and grandchildren; no documentation has been provided to establish that they are unable to assist the applicant's spouse emotionally. Finally, it has not been established that the applicant's spouse is unable to travel to Mexico, his birth country, to visit the applicant on a regular basis. 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)).

As for the financial hardship referenced, the AAO notes that 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. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation has been provided with the appeal to establish the applicant's spouse's financial situation, including income and expenses, to establish that due to the applicant's inadmissibility and consequent physical absence, he is suffering extreme financial hardship. Moreover, counsel does not explain why the applicant is unable to obtain gainful employment abroad and alleviate the applicant's spouse's financial burden with respect to maintaining two households. While general references are made to the problematic economic situation in Mexico, no documentation has been provided to corroborate that the applicant is unable to obtain employment in her home country. Finally, it has not been established that the applicant's and her spouse's relatives, as referenced above, would be unable to assist the applicant's spouse financially should the need arise.

Counsel further references the physical hardship the applicant's spouse will endure if the applicant's waiver request is denied. As counsel notes, the applicant's spouse had an accident at work, and injured his right hand. Counsel contends that the applicant played an integral role in assisting her spouse after the injury and the applicant's continued absence will cause the applicant's spouse extreme physical hardship. Counsel has provided two medical reports that pertain to the referenced injury. However, the reports make no reference to what assistance the applicant's spouse needs from

the applicant specifically, and what hardships he will suffer if the applicant is not physically present in the United States. In fact, [redacted] who provided the reports, confirms that the applicant's spouse is discharged from active ongoing care and should obtain medical care on an as needed basis. *Letter from* [redacted], dated October 21, 2005. As such, although the applicant's spouse may need to make alternate arrangements with respect to his future employment and ongoing care because of the injury, it has not been documented that such arrangements rise to the level of extreme hardship.

The record establishes that the applicant has a very loving and devoted spouse who is 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 be above and beyond the normal, expected hardship involved in such cases. Thus, the AAO concludes that it has not been established that the applicant's U.S. citizen spouse will suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her 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. Counsel for the applicant asserts that the applicant's spouse will suffer numerous hardships were he to relocate to Mexico, including financial and physical hardship, as jobs are difficult to obtain and medical care is substandard. Counsel further asserts that the applicant's spouse will suffer emotional hardship as he will be forced to relocate abroad, away from his children and grandchildren, and he will be in danger due to the high crime rate in Mexico. No documentation has been provided to corroborate the hardships referenced by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant and alternatively, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to return to the United States. The record demonstrates that the applicant's U.S. citizen spouse face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising

whenever a spouse is 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.