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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 26 2009
(CDJ 2004 556 046 relates)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 District Director, Mexico City, Mexico. 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 who was found to be inadmissible to the United States pursuant to 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 is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated February 10, 2006.

On appeal, counsel contends the applicant's wife, has suffered extreme hardship since her husband left the United States. In addition, she submits new evidence regarding medical issues that have arisen and asks that the applicant be permitted back into the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on September 15, 2000; a declaration and two letters from [redacted] a letter from the couple's priest in California; a copy of [redacted] birth certificate; copies of the birth certificates of the couple's two minor children; copies of medical records; a copy of [redacted] claim for disability insurance; a copy of [redacted] consent to refer her child for assessment; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the record indicates, and the applicant does not contest, that he entered the United States in May 1999 without inspection and remained until May 11, 2005. He now seeks admission within ten years of his 2005 departure. Accordingly, he is 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself may experience is not a permissible consideration under the Act. Once 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, according to declaration, she has gall bladder stones and a hernia, both of which cause her excruciating pain and have prevented her from working. Surgery to correct both of these conditions was scheduled for September 20, 2006. [redacted] also states her husband had been making $20 per hour in the United States and that she had been making $11 per hour, but that since he left the country, she lost her job because she could not find anyone to watch her children and had to bring them to work with her. She states she was forced to apply for food stamps and is currently working a minimum wage job at Jack in the Box. She claims she has "received numerous notices regarding late payments on everything." [redacted] further contends her children have developed behavior problems since their father left the country, that her older son suffers from asthma, and that her younger son has "always been a sickly child." She fears she may lose her current job if she misses more work picking her children up from school due to their behavior problems or to take them to doctor's

appointments because of their health problems. In addition, she contends she could not move to Mexico with her children in order to be with the applicant because she is not fluent in Spanish, has never lived there, and the medical care and schooling in Mexico are inferior compared to the United States. She asserts it would be difficult to afford her son's asthma medicines in Mexico and that there is no medical insurance available there. *Declaration of* [redacted], dated April 17, 2006.

It is not evident from the record that the applicant has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

[redacted] claim that she has suffered extreme financial hardship and would be able to get off government assistance if the applicant were permitted to return to the United States, is unsupported by the record evidence. There are no tax or financial documents whatsoever in the record. There is no evidence [redacted] receives food stamps and no copies of overdue bills. There is no documentation regarding her income or expenses. There is no evidence from either the applicant's former employer or [redacted] former or current employer confirming the dates of employment or wages. Although [redacted] financial situation sounds dire and the AAO is sympathetic to her circumstances, going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding [redacted]s health problems, there is insufficient evidence in the record to show extreme hardship. Although the record contains copies of [redacted]'s medical records and a letter stating her surgery was scheduled for September 20, 2006, there is no letter in plain language from a physician or health care professional describing the diagnosis, treatment, prognosis, or severity of [redacted]s health issues. There is no letter or statement describing what surgery entails, how long recovery is expected to last, what, if any, medications or assistance [redacted] needs, or what type of follow-up treatment is required. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed. Again, going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Matter of Soffici, supra.*

Regarding [redacted]s claim that her children's health and behavior problems cause her extreme hardship, there is insufficient evidence to support these assertions. There is no letter from a health care professional documenting the couple's older son's asthma condition and describing its severity, required medications, or treatment needed. Similarly, there is no supporting documentation regarding the couple's younger son's frequent illnesses. There are no letters from school administrators, teachers, counselors, or other parents in the record. Although there is a "Parent Consent to Refer For Assessment" in the record, there is no indication any assessment was scheduled or conducted, and no indication regarding the results of any such assessment. Nor is there any documentation related to potential treatment options in Mexico. Without supporting documentary evidence, the applicant has failed to meet his burden of proof. *Matter of Soffici, supra.* While the AAO does not doubt that [redacted] and her children miss the applicant, without additional evidence, there is no evidence that the level of hardship they have experienced rises to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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)(v) 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.