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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H3

[redacted]

FILE: [redacted] OFFICE: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 05 2009
(CDJ 2004 741 199 relates)

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:

SELF-REPRESENTED

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Mexico, initially entered the United States without inspection in April 2000 and did not depart until September 2005. She 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.[1] The applicant seeks a waiver of inadmissibility in order to reside with her U.S. citizen spouse.

The 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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated June 5, 2006.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated June 9, 2006; a letter from [redacted] the Baptist Catholic Church, dated June 9, 2006; a letter from the applicant's children's babysitter, dated June 9, 2006; and academic documentation relating to the applicant's child, [redacted] dated March 16, 2006. In addition, a letter from the applicant's spouse, written in Spanish, was provided.[2]

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

---

[1] The applicant does not contest the district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

[2] 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 (USCIS)] 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.

Because the applicant failed to submit a certified translation of the letter referenced above, the AAO cannot determine whether said letter supports the applicant's claims for a waiver. Accordingly, the referenced letter is not probative and will not be accorded any weight in this proceeding.

> (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 *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).

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 and/or the children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship if the applicant's waiver is not granted. On the Form I-290B, the applicant asserts that he would suffer extreme emotional hardship due to the long and close relationship he and the children have with the

applicant, and the impact that the applicant's absence is having on his ability to maintain the household, care for his children, and be the primary breadwinner for the family. The applicant also asserts that he is suffering extreme hardship due to the negative impact the applicant's absence is having on their children. *See Form I-290B,* dated June 9, 2006.

The AAO concludes that the applicant's U.S. citizen spouse would encounter extreme hardship were the applicant to reside abroad while he remains in the United States. Due to the demands placed upon the family by the children, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner, while ensuring the continued financial viability of the household, without the complete emotional, physical and financial support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the monitoring and supervision the children require while the applicant works outside the home, a costly proposition, both financial and emotional, for the applicant's spouse. *See Letter from* [redacted] dated June 9, 2006.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule were the applicant unable to reside in the United States, as the applicant would no longer be assisting in the care of the children. Any alternate employment position would pay less as he would be working fewer hours. As such, were the applicant's waiver denied, the applicant's spouse would suffer emotional and financial hardship. He would face hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why her U.S. citizen spouse is unable to relocate to Mexico, his birth country, to reside with the applicant.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resided abroad, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if he were to accompany the applicant abroad based on the applicant's inadmissibility. 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.