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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 22 2010

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

Perry Rhew
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 establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in November 1998 and did not depart the United States until December 2006. 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.[1] The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident child, born in 1996.

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 December 1, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated January 7, 2008, and referenced exhibits. 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-
> >
> > . . . .
> >
> > (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

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

> 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 her child 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 were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration he states that he is emotionally destroyed due to the absence of the applicant. He notes that he is suffering stress because he is so worried about her in Mexico. He contends that he cries about the situation often. *Declaration from* [redacted], dated December 27, 2007.

In addition, he notes that his lawful permanent resident step-child, currently residing with him in the United States, is experiencing emotional distress due to long-term separation from his mother. The applicant's spouse asserts that his step-child, who was abandoned by his biological father when he was one year old, is having problems in school because he misses many days to visit his mother in Mexico. In addition, due to his mother's absence and his step-father's work schedule, the child is not able to participate in numerous physical and social activities, including swimming and water polo. *Id.* at 1-2.

Finally, the applicant's spouse explains that he needs to continue his obligations to his business, [redacted], to ensure financial viability for the family, including his spouse, step-child, and two children from a previous marriage. He notes that he has owned the business for many years and has ten employees. Due to his spouse's inadmissibility, he asserts that he is losing the business because he is worried about his spouse. Were he to lose the business, he would experience financial hardship. *Id.* at 1-2.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. It has also not been established that the applicant's step-child is experiencing extreme hardship due to his current living arrangement with his step-father, thereby causing extreme hardship to the applicant's spouse, the only qualifying relative in this case. The record indicates that the applicant's child is very well-mannered, interested in doing well in school, has many friends and is respected, and although he has missed school to visit his mother, he has been able to complete his requirements for school. *Letter from* [redacted] dated December 14, 2007.

Moreover, it has not been established that the applicant's spouse, residing in San Diego, California, is unable to travel to Mexico 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 by the applicant's spouse, no evidence has been provided by counsel that establishes the applicant's and her family's financial situation, including income and expenses, assets and liabilities. Nor has any evidence been provided to establish the financial viability and profitability of the applicant's spouse's business, to establish that without the applicant's physical presence in the United States, the business will suffer to an extent that will cause the applicant's spouse extreme financial hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility 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.

The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship as a result of continued separation from the applicant. However, his situation, if he 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 established that the applicant's U.S. citizen spouse will suffer extreme emotional and/or financial hardship if the applicant resides abroad due to his inadmissibility.

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. The applicant's spouse asserts were he to relocate abroad, he would suffer emotional and financial hardship. He contends that he would lose his business as he would no longer be present in the United States to manage it. Moreover, he would suffer emotional hardship as he has lived in the United States for 23 years and has no ties to Mexico, as he was born in Argentina. Furthermore, he would lose contact with his children from his first marriage who reside in the United States. Finally, he contends that he would not be able to work in Mexico, and thus, would not be able to continue his financial support to his biological children. *Supra* at 1-2.

In addition to the above assertions made by the applicant's spouse with respect to the hardships he would face were he to relocate to Mexico, the AAO notes that the U.S. Department of State has issued a Travel Warning for U.S. citizens and lawful permanent residents intending to travel to Mexico. *Travel Warning-Mexico, U.S. Department of State,* dated March 14, 2010. Based on a totality of the circumstances, the AAO finds that the applicant has established that her U.S. citizen spouse would encounter extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 relocate abroad to reside with the applicant due to her inadmissibility, the applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad. 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.