identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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]

#6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: MAY 13 2010
CDJ 2004 827 044

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Gabrman

Perry Rhew
Chief, Administrative Appeals Office

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

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 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 and again seeking admission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In a decision dated December 4, 2007, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her continued inadmissibility. The application was denied accordingly. *See Decision of District Director* dated December 4, 2007.

On appeal, the applicant's spouse provided a statement on behalf of the applicant in the Notice of Appeal (Form I-290B). In his statement, the applicant's spouse asserts that he is experiencing emotional, psychological and financial hardships as a result of the applicant's inadmissibility. In addition, he claims that the applicant is suffering from emotional and psychological hardships.

The record contains Biographic Information (Form G-325A) regarding the applicant, an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a letter written in Spanish from the applicant's spouse without a translation, a decision from the District Director and a Form I-290B.

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.

The record indicates that the applicant entered the United States without inspection in March of 2001, and remained until September 30, 2006 when she voluntarily departed. The applicant thus accrued unlawful presence from when she entered the United States in March 2001 until September 30, 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The applicant's qualifying relative in this case is her spouse, who is a naturalized United States citizen.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on qualifying relative spouse of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Mexico and in the event that he remains in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The only evidence submitted relating to the potential hardships facing the applicant and her family was the statement within the Form I-290B. Although the applicant also provided a letter from her spouse in the initial waiver application, Form I-601, this letter was written in Spanish and the requisite translation was not provided. 8 C.F.R. § 103.2(a)(3) states:

> (3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] 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.

As such, the letter from the applicant's spouse written in Spanish without a translation cannot be considered in analyzing this case.

In the applicant spouse's statement in the Form I-290B, he states that he is experiencing emotional hardship and psychological anxieties as a result of his separation from the applicant and his children. He also expresses financial concerns relating to his difficulty in supporting two households. In addition, he states that the applicant is suffering from depression, stress and anxiety due to their separation. The applicant's spouse also mentions his concern for the psychological health of his children living without a father, and the education of his children. Finally, the applicant's spouse expresses his concern about residing in Mexico, explaining that his wife has nightmares of being taken away.

The AAO finds that the applicant's spouse is not suffering from extreme hardship as a consequence of being separated from the applicant. While he clearly is suffering due to the separation from his family emotionally and possibly financially (although no additional evidence was provided to corroborate this contention), these hardships are not outside the usual difficulties encountered when a family member is removed.

The AAO likewise finds that the applicant has not met her burden in showing that her spouse would suffer extreme hardship if he relocated to Mexico. The record contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant resides or other locations where she and her spouse would likely reside. If the applicant's spouse relocated to Mexico, he would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting two households. The applicant's spouse would likely lose his employment if he left the United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning her spouse's current employment and available employment opportunities in Mexico. The record reflects that the applicant's spouse is a native of Mexico. He is unlikely to experience the hardships associated with adjusting to a foreign culture. He has not addressed whether he has family ties there, and the AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant's spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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) 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.