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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]

#6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: MAY 19 2010
CDJ 2004 758 291

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. Johnson

Perry Rhew
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 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 his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated November 23, 2007, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his continued inadmissibility. The application was denied accordingly. *See Decision of District Director* dated November 23, 2007.

On appeal, the applicant's spouse provided a letter on behalf of the applicant. In the letter, the applicant's spouse asserts that she is experiencing emotional hardships and health issues, such as anxiety attacks, as a result of the applicant's inadmissibility.

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), two letters from the applicant's spouse, a decision from the District Director, a Notice of Appeal (Form I-290B), discharge instructions from a hospital visit by the applicant's spouse and court documents relating to the applicant's underage drinking charge.

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 September of 1999, and remained until October of 2005 when he voluntarily departed. The applicant thus accrued unlawful presence from when he entered the United States in September 1999 until October 2005, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his 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 his spouse, who is a United States citizen.

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 a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Mexico and in the event that she remains in the United States, as she 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 evidence submitted relating to the potential hardships facing the applicant's qualifying spouse includes two letters from the qualifying spouse and discharge instructions relating to her visit to the hospital.

In the applicant spouse's letters, she states that she is experiencing emotional hardship and psychological anxieties, such as panic attacks and depression, as a result of her separation from the applicant. In addition, she asserts that the applicant assisted her with her health issues, including asthma, allergies and high blood pressure. Finally, she also expresses financial concerns relating to her difficulty in taking care of the outside maintenance of her home due to allergies and asthma. The applicant's spouse indicates that the applicant was the sole income provider, when he lived in the United States, due to her high blood pressure.

The AAO finds that the applicant's spouse is not suffering from extreme hardship as a consequence of being separated from the applicant. While she clearly is suffering due to the separation from her spouse 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. In addition, although the applicant lists a host of health problems that she is experiencing, she provides little documentation regarding such issues. Similarly, she submitted discharge papers from a hospital visit with no information regarding the circumstances relating to her visit or the conditions she allegedly suffers. Moreover, no corroboration exists to

demonstrate that it is necessary for the applicant to assist her with her health issues, rather than other family members present in the United States.

The AAO likewise finds that the applicant has not met his burden in showing that his spouse would suffer extreme hardship if she 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 he and his spouse would likely reside. If the applicant's spouse relocated to Mexico, she would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting herself alone. The applicant's spouse would likely lose her employment if she left the United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning his spouse's current employment and available employment opportunities in Mexico. The applicant has not claimed that his spouse will encounter any 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 for both himself and his spouse. 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.