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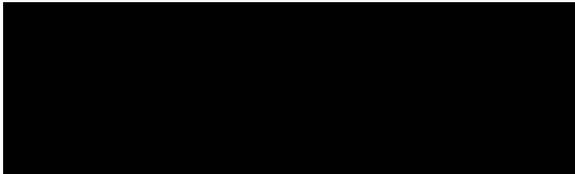
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: **NOV 18 2009**
(CDJ 2004 779 227 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:



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).

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 1995 and did not depart the United States until July 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in July 2005. 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 his U.S. citizen spouse, step-child, born in 2000, and biological child, born in 2003.

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 September 22, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated October 23, 2006 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, he 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 himself 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 their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that she will suffer emotional, physical and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to the absence of moral support from the applicant. In addition, she contends that she is diabetic and insulin dependent, and without her spouse's physical presence, she is suffering physical hardship due to difficulty walking and caring for her children on a daily basis. Finally, the applicant's spouse asserts that she is experiencing financial hardship as the applicant is not in the United States to assist with the finances of the household. She contends that due to her disability, she is unable to work and since the applicant's departure, she has "lost my apartment; I lost all my furniture and family belongings. I had to sell my husband's [the applicant's] car.... I have to live with my mom and dad. However, they work and they don't have time for me...." *Letter from* [REDACTED] dated October 23, 2006.

To support the medical, physical and financial hardship noted by the applicant's spouse in her letter, documentation has been provided confirming the applicant's spouse's medical conditions, specifically, insulin-dependent diabetes, hyperlipidemia and obesity, and the negative impact of her diabetes on her lower extremities. *See Medical Notations from* [REDACTED], dated

December 19, 2005 and January 12, 2006. In addition, documentation has been provided establishing that the applicant's spouse has applied for disability. *See Notice of Hearing*, dated September 20, 2006. Moreover, it has been established that the applicant is currently receiving government assistance in the form of food stamps and social security. *See Application for Supplemental Security Income*, dated January 24, 2005. Finally, documentation has been provided confirming that prior to the applicant's departure from the United States, he was employed with [REDACTED] having commenced with said employer in March 2001. *See Form G-325A, Biographic Information*, dated October 27, 2005.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse has had to assume the role of primary caregiver to two young children, while suffering from medical, physical and financial hardships, without the complete support of the applicant. The applicant's spouse needs her husband on a day to day basis, to help with the care of their children and to provide financial and emotional support, in light of the applicant's spouse's documented medical issues and her inability to work due to said conditions. The applicant's spouse needs her husband's emotional, physical and financial support on a day to day basis. A prolonged separation at this time would cause 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 relocates abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse contends that she is unable to relocate to Mexico "because I take so many medicines and I would not afford my Insulin. The hospitals are so far from my husband's birthplace, and due to my nationality; they will not help me with any insurance benefits.... The schools for our children are also far away from my husband's domicile and I ca [sic] not walk too much...." *Supra* at 1-2. Counsel has not provided any documentation to substantiate the hardship claims referenced by the applicant's spouse. 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)).

In addition, counsel asserts that even if the applicant's spouse were to be able to secure and maintain medical care in Mexico, she would not be able to maintain any relationship or see her parents or siblings, due to the time difference and the cost of transportation, and she would suffer due to the "appalling social and economic conditions...." *Brief in Support of Appeal*, dated October 23, 2006. Counsel further notes that the unemployment rate in Mexico is very high and thus, the applicant's spouse would suffer financial hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship if he were

not permitted to reside in the United States, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. 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.