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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
(CDJ 2005 590 957)

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: SEP 01 2009

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).

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, entered the United States without authorization in August 1998. He did not depart the United States until October 2005. He 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 1991, and child, born in 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 15, 2006.

In support of the appeal, counsel for the applicant submits the following: a psychological report for the applicant's spouse, dated October 10, 2006; support letters from the applicant's spouse's sister and parents; a letter from the applicant's child's pediatrician, dated September 15, 2006; a letter from the applicant's spouse, dated September 13, 2006; a letter from the applicant's step-child, dated September 12, 2006; and financial documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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

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

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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The record contains references to the hardship that the applicant’s U.S. citizen children would suffer if the applicant’s waiver of inadmissibility is not granted. 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 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 close relationship she has with her husband. She also notes that her youngest child had to be taken out of day care due to its prohibitive cost and is now living with the applicant in Mexico so that he may care for her while she continues working full-time and over-time, thereby causing her emotional hardship as she is separated from her young child. Moreover, the applicant’s spouse’s eldest child’s biological father was deployed to Iraq and her step-father relocated abroad due to his inadmissibility; such a separation from her father and step-father has caused her extreme

emotional hardship, which in turn has caused hardship to the applicant's spouse. *Letter from* [REDACTED] dated September 13, 2006.

To support the emotional hardship referenced by the applicant's spouse, a psychological report has been provided by [REDACTED]. Dr. [REDACTED] concludes that the applicant's spouse is suffering from major depressive disorder due to the applicant's inadmissibility. She further states that the applicant's spouse would benefit from antidepressant medication. *Psychological Report from* [REDACTED], *Bilingual Clinical Psychologist*, dated October 10, 2006.

Finally, the applicant's spouse asserts that she is suffering extreme financial hardship due to the decrease in family income after the applicant departed in 2005. As she contends,

My average monthly expenses are \$3,664.45. My current monthly take home income is only \$2,216.72. When [REDACTED] [the applicant] was in the U.S., he was earning more than \$4000 a month and we were able to survive financially. Now, with [REDACTED] unemployed in Mexico, we are sinking further and further into debt. I fear that we will soon lose our house....

While in Mexico, [REDACTED] has not been able to find work.

In June, while in Mexico, [REDACTED] [the applicant's youngest child] took a hard fall that required medical attention. My husband could not afford to pay for the medical bills so he had to borrow money to pay for the medical bills. [REDACTED] has a lump in her neck. However, because of the financial strain of attempting to maintain two households on one salary, we cannot even afford to have Mexican doctors look at it. [REDACTED] and [REDACTED] are living day to day on less than subsistence income....

Without [REDACTED] income, I can no longer afford the maintenance on our house. I have leaky faucets, problems with the air conditioner, and foundation problems that need expensive repairs. I fear that I will no longer be able to make the mortgage payments and that we will lose our house....

Supra at 1-3. Financial documentation has been provided to establish the applicant's spouse's current income and expenses, to confirm the financial shortfall due to the applicant's inadmissibility.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to two young children, without the complete emotional, physical and financial support of the applicant. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to remain abroad while she resides in the United States. The applicant's spouse needs her husband's emotional

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. This criteria has not been addressed by counsel, the applicant and/or his spouse. As such, it has not been established that the applicant's spouse would experience 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 will face extreme hardship were the applicant unable 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 U.S. citizen spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is 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.