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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: SEP 25 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 establishes that the applicant, a native and citizen of Mexico, entered the United States in July 1994 with a valid nonimmigrant visa for pleasure and remained beyond her period of authorized stay. She did not depart the United States until July 2003. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in July 2003. 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen 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 August 15, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated October 9, 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 admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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 lawful permanent resident spouse is the only qualifying relative, and hardship to the applicant and/or their child cannot be considered, except as it may affect the applicant's spouse.

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).

The applicant's lawful permanent resident spouse contends that he will suffer emotional and financial hardship if the applicant's waiver request is not granted. In a declaration he states that he is experiencing emotional hardship due to the long and close relationship he has with his spouse. In addition, the applicant's spouse notes that his son resides in Mexico with the applicant and such a separation is causing the applicant's spouse extreme hardship. Finally, the applicant's spouse contends that he is suffering financial hardship because he is maintaining two households, one in the United States and one in Mexico. *Affidavit of* [REDACTED] dated September 25, 2006.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. Nor has it been established that the applicant's U.S. citizen son is unable to relocate to the United States to reside with his father, thereby ameliorating the hardship the applicant's spouse asserts with respect to having his son reside abroad. Although counsel notes that the applicant's spouse is unable to care for his son by himself due to his heavy, inflexible work schedule as a waiter, no documentation has been provided to corroborate that assertion. *Brief in Support of Appeal*, dated October 9, 2006. 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). Finally, it has not been established that the applicant's spouse is unable to travel to Mexico, his native country, on a regular basis to visit his 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)).

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 exists. 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant's spouse, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). The AAO notes that in 2005, after the applicant's departure, the applicant's spouse's wages totaled \$32,197, over the poverty guidelines. *See Form 1040, U.S. Individual Income Tax Return for 2005*. As such, it has not been established that the applicant's spouse is experiencing extreme financial hardship due to his wife's residence abroad. Nor does the record indicate what specific contributions the applicant made to the household prior to her departure from the United States, to establish that her physical absence is causing extreme financial hardship to her spouse. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording her the opportunity to assist her spouse with respect to their finances should the need arise. While the applicant's spouse may need to make adjustments with respect to the family's financial situation and the maintenance of the household while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's 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 been established that the applicant's lawful permanent resident spouse is suffering extreme emotional and/or financial hardship due to the applicant's 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. Counsel contends that were the applicant's spouse to relocate abroad to reside with the applicant, he would abandon his legal residency in the United States. In addition, he would lose the benefits he has earned as a long-term employee, including earned retirement and social security benefits. *Supra* at 3. Moreover, the applicant's spouse notes that he would suffer emotional hardship due to the long and close relationship he has with his two other children from his previous marriage, and his grandchildren, who are all U.S. citizens, residing in the United States. *Supra* at 1. Based on the applicant's spouse's potential loss of his lawful permanent resident status and retirement benefits and the long-term separation from his children and grandchildren, the AAO finds that the applicant's spouse would experience extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her lawful permanent resident spouse would suffer extreme hardship were he to relocate abroad due to her inadmissibility, it has not been established that the applicant's 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.