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

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PUBLIC COPY

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: JAN 08 2010
(CDJ 2004 779 030 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:

SELF-REPRESENTED

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 October 2001 and did not depart the United States until October 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 her U.S. citizen spouse and U.S. citizen or lawful permanent resident children, born in 1989, 1992, 1996 and 1998.

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 October 28, 2006.

In support of the appeal, the applicant submits the following: a letter from the applicant's U.S. citizen spouse, dated November 17, 2006; photographs of the applicant and her family; community support letters; a letter from [redacted], dated November 20, 2006; a letter from [redacted] dated November 14, 2006; financial documentation; and a letter written in a foreign language.[2]

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-
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> . . . .

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

[2] 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services (USCIS)] 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.

Any documents submitted by the applicant that are not in English and/or are not translated into English are not probative and will not be accorded any weight in this proceeding, as the AAO cannot determine whether said documentation supports the applicant's claims for a waiver.

> (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…

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 herself 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 must first establish that he will suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration the applicant's spouse states that he is suffering emotional hardship due to his spouse's

absence. He contends that his spouse used to provide structure for him and the children and took care of everything in the house, including caring for the children, helping them with homework, cleaning, and ensuring the bills were paid on time; she was his right hand at home. Due to her absence, he notes that his health has deteriorated, he is not eating well, and he is having trouble sleeping. He asserts that he is likely going to take anti-depressants to help him get through the days at work and dealing with the household. He further notes that his children are experiencing hardship due to their mother's inadmissibility. He states that his two sons were fighting since they had to share responsibility for the house and that the tension was so high that he had to relocate one of his children to live with his aunt. Finally, the applicant's spouse contends that he is suffering financial hardship as he has to maintain two households, one in Mexico and one in the United States. Due to the financial hardship, he is unable to travel regularly to visit the applicant. *Letter from* dated November 17, 2006.

In support of the emotional hardship referenced by the applicant's spouse with respect to his son, a letter has been provided by confirming that is suffering academic hardship and stress due to his mother's inadmissibility. He notes that is unable to concentrate on his schoolwork and is lonely. Practically speaking, he states that due to his mother's absence, is unable to participate in extra-curricular activities at school because his father works long hours and is unable to provide the necessary transportation. Moreover, he references the hardship the applicant's spouse is facing as he is concerned that his son is unable to have a complete high school experience and receive the kind of supervision and guidance that the applicant would help provide as a stay-at-home mom. ***Letter from*** dated November 14, 2006.

In addition, a letter has been provided from confirming that the applicant's spouse is seeing her for counseling. She notes that he is suffering from high anxiety and depression due to the loss of his spouse. She asserts that the applicant's spouse is overwhelmed with loneliness, the children's problems and the burden of maintaining two households, without the financial resources to travel to Mexico regularly to visit his spouse. As concludes, "It is my professional opinion that is extremely anxious and is suffering extreme hardship.... Medication might be useful at this time but the return of his wife...would be the better choice for that is the real problem that is causing such anxiety and depression...." *Letter from* dated November 20, 2006.

Due to the applicant's inadmissibility, the applicant's U.S. citizen spouse has had to assume the role of primary caregiver to multiple children, one with signs of academic hardship and emotional stress as documented by his guidance counselor, without the complete support of the applicant. The applicant's spouse needs his wife on a day to day basis, to help with the care of their children and to provide emotional support. 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. Neither the

applicant and/or her spouse have addressed the specific hardships the applicant's spouse would encounter were he to relocate to Mexico, his native country, to reside with the applicant due to her inadmissibly. The only reference to this criteria is from who notes that the applicant's spouse does not want to relocate to Mexico as it may be dangerous, depressing, and unstable, due to lack of jobs and his low academic training level. *Id.* at 1-2. 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)). As such, the applicant has failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to reside in the United States, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he 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.