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20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CIUDAD JUAREZ, MEXICO

Date:

NOV 06 2007

IN RE: Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and 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, pursuant to the record, admitted on April 6, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that he had entered the United States without inspection in July 1999 and had remained until September 2001, when he voluntarily departed the United States. The applicant accrued unlawful presence in excess of one year. The applicant 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge, August 30, 2005.*

In support of the appeal, the following documents were provided: a brief from the applicant's representative, dated November 28, 2005; an evaluation regarding the applicant's spouse; a letter from the applicant's spouse, dated September 4, 2005; internet print-outs regarding the applicant's spouse's medical condition; and Forms W-2 Wage and Tax Statements issued to the applicant's spouse. 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:

(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...

Counsel for the applicant first contends that Section 212(a)(9)(B)(i)(II) of the Act does not apply to the applicant, thereby making the applicant admissible to the United States. As counsel states in her brief, "...it is our argument that 212(a)(9)(B) should not apply to applicants who have left the United States voluntarily and not under the threat of deportation or removal. It is our argument that the simple language of section 212(a)(9) clearly refers to aliens previously removed and appears to imply that only those aliens who are removed by the Service or placed in removal proceedings and ordered to leave by the immigration judge. The applicant has never been previously removed and never placed in removal proceedings. The applicant left the United States and has never re-entered. We are arguing that such a voluntary return should not be considered a departure for purposes of 212(a)(9)(B)..." *Brief in Support of Appeal*, dated November 28, 2005.

Counsel provides no case law or legal memoranda issued by the U.S. Citizenship and Immigration Services (CIS) to support her assertions regarding the inapplicability of section 212(a)(9)(B)(i)(II) to the applicant's immigration violation. The AAO notes that the language of Section 212(a)(9)(B) states that an alien who 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. Despite counsel's assertions to the contrary, the wording in the Act is clearly not limited to removable aliens only; it applies to aliens who departed or were removed. In this case, the applicant departed the United States; as such, he is subject to inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(i)(II) of the Act provides that a waiver under section 212(a)(9)(B)(v) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant 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).

Counsel asserts that the applicant's spouse suffers emotional and physical distress due to the applicant's immigration situation. In support, counsel first offers a letter from the applicant's spouse that states that she is suffering from Clostridium Difficile Infection, a condition whereby bacteria causes inflammation of the colon and diarrhea. In the applicant's spouse's letter, she confirms that she will need to be treated by a digestive and liver disease specialist "...for several months or a couple of years..." [REDACTED] dated September 4, 2005. No corroborating evidence has been provided from a medical professional to further detail the applicant's spouse's specific medical condition, its gravity, its short and long-term treatment plan, and what hardship the applicant's spouse will face without the applicant's assistance. Although the AAO recognizes that the applicant's spouse may need assistance with respect to this medical condition, it has not been shown that any alternate arrangements for her care, were the applicant not permitted to return to the United States, would cause the applicant extreme hardship.

Counsel further provides an evaluation from [REDACTED] based on an interview she conducted with the applicant's spouse on September 24, 2005, to corroborate the applicant's spouse's physical and emotional distress. In said evaluation, [REDACTED] states that the applicant's spouse "...has suffered from many emotional and health problems due to the stress of being separated from her husband [the applicant] and trying to get him permission to return to the United States. After taking her husband to Mexico, [REDACTED] [the applicant's spouse's] physical and mental health took a turn for the worse...Shortly after she returned to the United States without her husband, [REDACTED] was diagnosed with depression and given medication to control this disorder...It is apparent that [REDACTED] continued health problems are a result of her extremely high levels of stress due to separation from her husband...It is the professional opinion of the Evaluator that the denial of [REDACTED] permission to enter the United States will definitely cause irreversible emotional and physical harm for his U.S. citizen wife, [REDACTED]' Evaluation by [REDACTED]

An evaluation based on a one-time interview does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the evaluator's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, although the evaluator has referenced that the applicant's spouse is depressed, the evaluator makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions and/or treatment, to further support the gravity of the situation. In addition, counsel has provided no corroborative evidence from a licensed physician to substantiate the evaluator's statements that the applicant's spouse is suffering from depression.

The evaluation of the applicant's spouse shows that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's continued inadmissibility from the United States. Although the depth of concern and anxiety over the applicant's immigration status 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, and thus the familial and emotional bonds, exist. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of* [REDACTED] 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* [REDACTED] 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).

Moreover, the applicant’s spouse states that she has suffered financial hardship due to the applicant’s absence. As the applicant’s spouse states, “. . .I do have medical insurance. However, there are financial deductibles. Every urgent care visit is a much higher co-pay cost than a regular doctor’s visit. With the hospital deductible, I am on a payment plan to pay off. Each specialist is also a higher out-of-pocket cost and there too I am on a payment plan. . .In addition, since I am unable to attend schools my loans came due. I have also arranged to pay back my loans. . .” *Supra* at 3.

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 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of* [REDACTED] 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Pursuant to the record, although the applicant’s spouse was required to take a leave of absence due to her medical condition, she states that she has been able to resume employment. *Supra* at 2. As such, it has not been established that the applicant’s spouse’s economic situation is now extreme due to the applicant’s absence. Moreover, counsel provides no evidence to substantiate that the applicant is unable to obtain employment in Mexico, thereby assisting the applicant’s spouse with the household expenses. Finally, the applicant’s spouse indicates that she has two grown children, [REDACTED], born in 1972, and [REDACTED], born in 1975, five sisters, one brother and both parents residing in the United States. *Affidavit of* [REDACTED] [REDACTED] dated April 1, 2005. It has not been established that the applicant’s spouse’s children, siblings and/or parents would be unable to assist the applicant’s spouse should her economic and/or medical situation worsen in the future. 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)).

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, counsel maintains that the applicant's spouse would not be able to relocate to Mexico because she has never lived there and will experience "...unbearable and insurmountable culture shock in Mexico..." *Letter from [REDACTED]*, dated September 30, 2005. Moreover, counsel alleges that the applicant's spouse "...will not be able to find such [medical] services in Mexico because she will not have the money and she will not have the insurance. The more than likely scenario is that she be provided with Mexican government services available only to Mexicans but basically this amounts to a death sentence..." *Id.* at 2.

Counsel further declares that there is no employment available for the applicant's spouse in Mexico. As counsel states, "...she [the applicant's spouse] is fully employed in the United States and at her age and background, would not find employment in Mexico...and if she were to be able to find employment, she could not work because she could not be lawfully employed as she is not a Mexican citizen..." *Brief in Support*, at 7-8. Finally, counsel insists that the applicant spouse is a "...very likely target [for kidnappings and robberies] because the aim of these criminals is to quickly obtain cash and it is clear that she would be able to come up with the ransom because of her connection to the United States..." *Id.* at 11.

No corroborating evidence has been provided by counsel to support any of the above-referenced statements regarding the hardships the applicant's spouse would face were she to relocate to Mexico. The record is silent. 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 [REDACTED]* 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, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States for ten years, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to accompany the applicant. 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.