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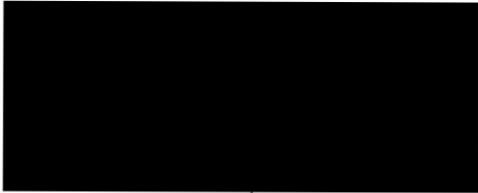
U.S. Department of Homeland Security
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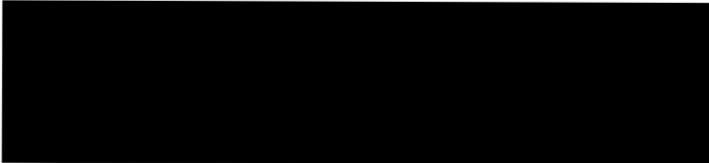
FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO

Date: **APR 22 2008**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico and appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. Documentation was subsequently sent to the AAO establishing that the appeal was timely filed. The AAO will therefore withdraw its prior decision and sua sponte reopen the matter. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who, pursuant to the record, admitted in April 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that she had entered the United States without inspection in 1992 and had remained until April 2005, when she voluntarily departed the United States. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in 2005. The applicant was thus found to be inadmissible to the United States under 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. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to reside in the United States with her naturalized U.S. citizen spouse.

The officer in charge 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated December 9, 2005.

On appeal, counsel submits a brief, dated January 9, 2006 and letters in support of the appeal from community members, including teachers, friends, and the applicant's pastor. In addition, counsel submits a letter and translation from the applicant's spouse, dated February 3, 2006. 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 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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

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

In support of the waiver, the applicant's spouse asserts that he needs the applicant to return to the United States to assist with the care of their three U.S. citizen children. The applicant's spouse states:

...I currently work as a forklift operator.... My wage is \$10.77 @ hr. I work 40 hours a week and sometimes overtime.... I have been promised a promotion in January 2006 to machine operator and will earn between \$12 and \$15 @ hr....

Here in the United States, with my income, my wife and I have bought a house. We have been paying a mortgage for the last 4 years. We do not have much equity but it is a beginning for us....

I have been working long enough with Mount Olive Pickle to have just become eligible for benefits. I have life insurance and health insurance....

If we broke up the family and my wife stayed alone in Mexico while I remained in the United States with the children, there would be a financial impact as well not to mention the emotional impact. From the financial side, I would have to pay child care expenses since I have to leave the house before my children leave for school and they return from school before I return from work....

Our son [REDACTED]...has not done well in school so far. This year he is repeating the 4th grade. It is my opinion that his education problems are requiring special

attention in the school.... He requires his mother to be with him to support him through this difficult time. I am working too much of the day. I also have limited education. My wife is an important part of my son, [REDACTED]'s, education....

...In the 4 months that she has been gone, my children are upset and there is little I can do to help. We call her almost every day. My littlest one, [REDACTED], asks me to call. These calls are very difficult....

I am not able to take my children to church nor to the park on my time off from work because my wife is not here. On Sundays I have to clean the house and wash the clothes. When my wife was here the children went to church and we were able to enjoy ourselves together in different parks and other places together like visiting family....

Affidavit of [REDACTED] dated September 15, 2005.

A letter from [REDACTED], Teacher, North Duplin Elementary, confirms the applicant's spouse's statements regarding his son, [REDACTED], academic difficulties. As stated by [REDACTED]

...As [REDACTED] [the applicant's child's] third grade teacher, I know first hand of his educational and emotional needs. He struggles in the areas of reading and math to the point that he repeated third grade. He needs lots of encouragement and support. Both of his parents have been very supportive of the school system and have worked very hard to help Alex be successful. However, their efforts have been greatly thwarted as a result of his mother being absent from the home. His father is now having to fulfill the role of a single parent trying to work a full time job to provide for three children while striving single handedly to meet all their emotional, physical, mental, and spiritual needs as well. Of course this has cut down on individual time to spend with [REDACTED] helping him with homework. Alex is also a very immature little boy who needs lots of love and reassurance, as well as help with his school work. He is easily influenced by his peers and often exhibits silly immature behavior to get attention.... His mother being displaced from the home has had a negative effect on his self esteem and education....

Letter from [REDACTED], Teacher, North Duplin Elementary, dated January 18, 2006.

Based on the record, the AAO has determined that the applicant's spouse would experience extreme hardship if he remained with his children in the United States while the applicant resides in Mexico. Due to the extraordinary demands placed upon the family by Alex's academic problems, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner to three young children without the complete emotional, physical, and psychological support of the applicant. In addition, due to the young age of the children, the applicant's spouse would need to obtain a childcare provider who could provide the

constant monitoring and supervision the children require while the applicant works outside the home, a costly proposition for the applicant's spouse.

Alternatively, the applicant's spouse would be required to find employment with a reduced work schedule were the applicant unable to return to the United States, as the applicant would no longer be residing in the United States and assisting in the care of the three children. Such a reduced work schedule would pay less as he would be working fewer hours. The applicant's spouse would face hardship beyond that normally expected of one facing the inadmissibility of a spouse. As such, were the applicant unable to return to the United States, the applicant's spouse would suffer extreme hardship were he to reside in the United States with the three children. The AAO notes, however, that no documentation has been provided that establishes that the applicant would suffer extreme hardship were he to remain in the United States while his three children resided in Mexico with the applicant.

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. With respect to this criteria, the applicant's spouse states as follows:

...If I were to live in Mexico I would have to return to the State of Guerrero and to the rancho where my family is in Cuadrilla Nueva. My work there would be in brick laying, planting and harvesting corn or melons.... With my limited education I will not find work that would pay me more than the \$1.00 @ hour that is paid in Cuadrilla Nueva....

...I would not be able to provide education for my children. There is an elementary school in Cuadrilla Nueva where we would be living. After 5th grade my children would have to travel to the town of Altamirano that is 45 minutes away by car. I would not be able to pay for the continued education of my children. The costs would include not just transportation...but there is tuition, uniforms, and books....

A very important problem I would have for my children's education in Cuadrilla Nueva is that the elementary school is just one room. All 30 students from 1st grade to 5th grade are in the same room. I would not be able to provide the kind of education my children need....

It is my real hope to find a way for me to go to school and complete my own education through high school. There is no way for me in Cuadrilla Nueva. Even if I could get to Altamirano, there is no night school there. My hope for my own education would be lost if my wife were not permitted to return to the United States....

Supra at 1-2.

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.”).

The AAO notes that the applicant’s spouse makes numerous references to the fact that he will have to return to Cuadrilla Nueva, Mexico if his wife’s waiver is not approved, and that in that town, he will encounter a number of financial and educational hardships, including his inability to complete his own education. It has not been established that the applicant’s spouse is unable to relocate to another area of Mexico, thereby ensuring a better life for himself and his family. Moreover, no documentation has been provided to corroborate the statements made by the applicant’s spouse that he would not be able to find gainful employment in the manufacturing industry and that such unavailability would cause the applicant’s spouse extreme hardship. In addition, the applicant provides no evidence to establish that she would be unable to obtain gainful employment in Mexico, thereby assisting with the finances of the family.

Finally, although the applicant’s spouse contends that his children’s educational development would suffer greatly if the family were to relocate to Mexico, no corroborating evidence has been provided to document that the applicant’s children’s education would worsen in Mexico to an extent that would cause extreme hardship to the applicant. 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 limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were unable to return to the United States for a ten-year period. 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(i) 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.