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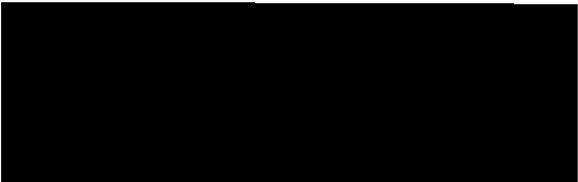
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U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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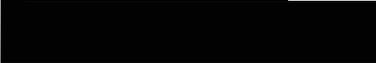
FILE:

Office: LOS ANGELES, CA

Date:

FEB 19 2009

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.

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, first entered the United States without inspection in 1996. Thereafter, the applicant departed the United States on three separate occasions.<sup>1</sup> 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.<sup>2</sup> The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse and stepchild.

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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 16, 2005.

In support of the appeal, counsel for the applicant submitted a brief, dated December 15, 2005 and referenced exhibits. 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

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<sup>1</sup> Pursuant to the record, the applicant first departed the United States in January 1997 and re-entered without inspection in February 1997. In January 2000, the applicant again departed the United States, and attempted re-entry in February 2000, but was unsuccessful. He returned to Mexico and re-entered the United States without inspection a day later.

<sup>2</sup> The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for 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.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

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. In the present case, the applicant’s U.S. citizen spouse is the only qualifying relative, and hardship to

the applicant and/or his stepchild, born in 1996, 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 and financial hardship if the applicant is removed from the United States. In a declaration she states that she would suffer extreme emotional hardship due to the long and close relationship she and her child have with the applicant, and that she would suffer extreme financial hardship because they are in the process of buying a new home, and are trying to get their bills in order. She also indicates that she needs the applicant's presence to assist her with the care of her child from a previous relationship, in light of the fact that she works a night shift. *Declaration of [REDACTED]*, dated December 15, 2005.

It has not been established that the applicant's spouse will suffer extreme emotional hardship if the applicant's waiver request is not granted. Nothing has been submitted to show that her emotional hardship is beyond that experienced by others in the same situation. It has also not been established that the applicant's spouse would be unable to make alternate arrangements for the care of her child, such as changing her work schedule and/or alternatively, having her family members and/or the child's biological father assist her in caring for her child while she is at work. Finally, it has not been established that the applicant's spouse is unable to travel to Mexico to visit the applicant on a regular basis. 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 for the financial hardship referenced, the AAO notes that 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 Shaughnessy*, 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).

No documentation has been provided with the appeal to establish that due to the applicant's inadmissibility, the applicant's spouse will suffer extreme financial hardship. The record indicates that the applicant's spouse's annual income in 2005 was \$21,840, which is over the 2008 poverty guidelines. *See Letter from [REDACTED] Payroll Administrator, TEVA Sicor Pharmaceuticals,*

dated December 8, 2005. Little documentation has been provided regarding her expenses in relation to her income. It has thus not been established that this type of income, without any additional financial support from her husband, would cause the applicant's spouse extreme financial hardship.

In addition, counsel has not established that the applicant is unable to obtain gainful employment abroad and alleviate the applicant's spouse's financial burden with respect to maintaining two households. While general references are made to the problematic economic situation in Mexico, no documentation has been provided to corroborate that the applicant specifically is unable to obtain employment in his home country. 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, as previously noted, the applicant's spouse has a vast support network, including her parents and numerous siblings; it has not been established that they are unable to help the applicant's spouse should she find herself in a financial predicament due to the applicant's inadmissibility. Alternatively, it has not been established that the child's biological father is unable to financially contribute to the care of his child, thereby ameliorating the applicant's spouse's financial burden.

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, 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.

The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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 established that the applicant's U.S. citizen spouse will suffer extreme emotional and/or financial hardship if the applicant relocates abroad due to his 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 for the applicant asserts and documents that the applicant's spouse will suffer numerous hardships were she to relocate to Mexico. To begin, the applicant's spouse will suffer due to long-term separation

from her family. As counsel notes, the applicant's spouse was born and raised in the United States, and in fact, has always lived in Southern California. She has a vast support network of family residing in the United States, all of whom she visits on a regular basis; she has no ties to Mexico.

Moreover, the applicant's spouse is gainfully employed on a long-term basis with a U.S. employer, and receives benefits, training and the potential for promotion. She is currently pursuing her career goal to become a respiratory therapist by studying at El Camino College. Relocating abroad will mean professional and academic disruption. Finally, the AAO notes that the applicant's spouse's child has been diagnosed with asthma and has been admitted to the hospital at least 19 times since June 1998 because of said medical condition, as documented extensively in the record, and counsel references the fact that medical care in Mexico is substandard and the air in said country is highly polluted, thereby increasing the health risks to the applicant's spouse's child, and by extension, hardship to the applicant's spouse. *Brief in Support of Appeal*, dated December 15, 2005. As such, based on a totality of circumstances, the AAO finds that the applicant's U.S. citizen spouse would encounter extreme hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility.

A review of the documentation in the record reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to remain in the United States. 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.