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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)

Date: JAN 22 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:

[REDACTED]

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 appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in 1999. She did not depart the United States until January 2004. 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 U.S. citizen spouse and child, born in December 1999.

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 February 16, 2006.

In support of the appeal, counsel for the applicant submits a brief; an affidavit from the applicant's U.S. citizen spouse, dated March 17, 2006; a medical evaluation with respect to the applicant's spouse, dated August 11, 2003; evidence of the applicant's spouse's parent's lawful permanent resident status in the United States; a letter regarding the applicant's spouse's mother's medical condition, dated March 2, 2006; a letter confirming the applicant's spouse's father's employment, dated March 3, 2006; and financial documentation. In addition, a letter written in Spanish was submitted.¹

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-

....

¹ 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 (CIS)] 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.

Because counsel failed to submit a certified translation of the letter referenced above, the AAO cannot determine whether said letter supports the applicant's claims for a waiver. Accordingly, the referenced letter is not probative and will not be accorded any weight in this proceeding.

(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 U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, their child and/or the applicant's spouse's parents cannot be considered, except as it may affect the applicant's spouse and/or parents.

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 U.S. citizen spouse asserts that he is experiencing emotional and financial hardship due to the applicant's inadmissibility. As he asserts,

[O]ur union got sealed with our son's birth on December 28, 1999. His name is [REDACTED] and he was born in Salinas, California.... His short age makes essential for him to be with her mother [the applicant]. He is severely suffering the change and I am worried of the psychological trauma that he is experiencing.... I can not decide to take just [REDACTED] with me because of his short age. He needs to be with his mother; and I can not take care of him because I must go to work.... [L]iving apart has turned to be very traumatic for all of us....

My child and I need my wife's [the applicant's] presence and moral support.... I am facing double expenses in housing and other items, because I have to send money to Mexico for my wife and my child's maintenance....

My child has the right to grow and live with his two parents, who will take care of him and who will give him dedication and a solid environment that will enable him to follow the right track in the future....

Letter from [REDACTED] dated November 23, 2005.

To begin, it has not been established that the emotional hardship suffered by the applicant's spouse due to the applicant's inadmissibility is extreme. It has also not been established that the applicant's child is unable to return to the United States to live with his father and/or that the applicant is unable to travel to Mexico, his native country, on a regular basis to visit his spouse. Moreover, the record indicates that the applicant's spouse's parents and four siblings reside in the United States; no documentation has been provided to establish that they are unable to assist the applicant's spouse emotionally and/or with the care of his child. 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)). Finally, while the AAO sympathizes with the applicant and her spouse regarding their desire to have more children, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

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."); *Shooshtary 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 the applicant's spouse's financial situation, including income and expenses, to establish that due to the applicant's inadmissibility, he is suffering extreme financial hardship. Moreover, counsel does not explain why 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 is unable to obtain employment in her home country. 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)). Finally, it has not been established that the applicant's spouse's parents and/or siblings would be unable to assist the applicant's spouse financially should the need arise.

The record establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's inability to reside in 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. Thus, the AAO concludes that it has not been established that the applicant's U.S. citizen spouse will suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility.

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. The applicant's spouse asserts the following hardships were he to relocate to Mexico:

I am 48% permanently disabled as a result of a workplace injury, and I need to remain in the U.S. where I am able to receive treatment.... The accident injured by back, neck, right arm, right ankle and my groin area.... Later it was discovered that I had an inguinal hernia.... In January 2003, I underwent an operation in an attempt to correct the hernia and reduce the pain. Unfortunately, since the operation I have still continued to suffer pain.... I am unable to work in physically demanding jobs. I am unable to stand or remain in a stationary position for extended periods of time. In addition to the hernia, I was also diagnosed with a lumbar disc protrusion, which causes muscle spasms and tenderness. The same is true of my right shoulder, which continues to cause me pain and has decreased the power of my grip in my right hand....

As the possibility of my having to move to Mexico to be with my wife [the applicant] comes closer, I am truly afraid of how this will affect my injury and the chronic pain I suffer. I need to stay where I have easy access to medical treatment with a doctor who is experienced and familiar with treating me. In Mexico, I would not have access to the same quality of medical treatment. Moving to Mexico, would mean putting my health and my future at risk....

I have no formal schooling and no specific training. All of my life I have worked as a general labor in agriculture.... Because my physical limitations, I have had difficulty finding jobs that can accommodate my disability. At least in the U.S. I have an established work history and I am connected in the farm labor business. In Mexico, I have no such work history and no connections that would help me find a position. Additionally in Mexico there is a surplus of young able-bodied men who are looking for work, my disability would prevent me from competing with these other workers and severely limit my ability to find accommodating work.

Both my parents and my siblings reside legally in the United States.... I would suffer extreme hardship leaving my family behind in the United States....

My mother is sick, and I feel an obligation to help my mother.... My mother suffers from diabetes and depends on me to help her.... Although my parents are married, my father currently lives in Chicago where he is working.... I am living in my mother's home so that I can be with her to give her all the help she needs. Her diabetes affects her eyesight and sometimes makes her so weak that she is not able to care for herself. At times she gets dizzy and cannot stand. She also gets severe headaches and

chronic pain in her arms. I have accepted the responsibility to be there for my mother, but I cannot continue in this role from Mexico. Being unable to keep my promise to care for my sick mother is an extreme hardship for me.

Because of my permanent disability, I would never be able to find a job in Mexico.... I cannot count on the support of any family to help me start a new life in Mexico....

Declaration of [REDACTED] dated March 17, 2006.

With respect to the hardships referenced above in relation to the applicant's spouse's mother, although a letter has been provided that establishes that the applicant's spouse plays a significant role in his mother's care, it has not been established that his father and/or four siblings, also legal residents in the United States, would be unable to assist her should the need arise. Moreover, although the applicant's spouse references the financial support he provides to his parents, no financial documentation has been provided that establishes the applicant's spouse's parent's current financial situation, to establish that without the applicant's spouse's continued financial assistance, they will suffer extreme financial hardship and in turn, cause extreme hardship to the applicant's spouse, the only qualifying relative in this case. Finally, it has not been established that the applicant's mother and/or father are unable to return to Mexico, their home country, to reside with the applicant and her spouse.

As for the applicant's spouse's hardships were he to relocate to Mexico, medical documentation has been provided to confirm the workplace injury that he sustained in 2002 that has resulted in limited movement, chronic pain and inability to perform his regular job duties. Moreover, it has been established that he needs continued therapy and follow-up treatment. As such, based on the applicant's spouse's medical condition and his need to be monitored and treated by physicians familiar with his medical situation, his inability to obtain employment in his area of expertise based on said disability, thereby causing financial hardship, and his need to be close to his family support network, especially his mother due to her medical condition, it has been established that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico to reside with the applicant.

As such, 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 were he to relocate abroad to reside with the applicant, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to return to the United States. The record demonstrates that the applicant's U.S. citizen spouse face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is 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.