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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 2 2 2009
(CDJ 2004 726 025 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:

[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).

Ellen C. Johnson

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 1995. She did not depart the United States until November 2005. The applicant accrued unlawful presence from August 2, 2000, when she turned 18 years of age[1] until November 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 U.S. citizen spouse and child.

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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated June 26, 2006.

In support of the appeal, counsel for the applicant submitted an affidavit from the applicant's U.S. citizen spouse, dated July 20, 2006; a psychoemotional and family dynamics assessment, dated July 14, 2006; a letter confirming the applicant's spouse's employment, dated July 18, 2006; and a support letter from the applicant's teacher. In addition, four letters written in Spanish were submitted.[2]

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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[1] Section 212(a)(9)(B) of the Acts states, in pertinent part:

> (iii) Exceptions—
>
> (I) Minors
>
> No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

[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 (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 letters referenced above, the AAO cannot determine whether said letters support the applicant's claims for a waiver. Accordingly, the referenced letters are not probative and will not be accorded any weight in this proceeding.

Aliens Unlawfully Present.-

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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. 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/psychological hardship due to the applicant's spouse's inadmissibility. As he states,

> I miss my wife [the applicant]. This is my first marriage, my wife's first marriage. We are in love. I am suffering without her in my life. When my wife was here, she took care of our home. She made our dinner. We would eat together each night. I drive a truck, but I drive locally, so we **would spend every night together. I miss her more than words can** express. I feel as though when I'm working now, that there is no urgency to return home because the house is empty....
>
> I have been suffering depression. I got diagnosed with depression when my wife's immigration issues were coming to light. I am taking Zoloft for my depression. I take the medication sporadically when the doctor believes I need it. Without the medication, I feel like I am going to die at that very moment. It is a terror and a panic feeling that comes over me....
>
> My daughter was born November 28, 2004. She is my only child. She is with my wife in Mexico. They left together in November 2005. When I went to see my wife and daughter, my daughter is taller than I remember, skinnier that [sic] I can recall. She is talking a lot more and I am missing out on her developments. She is growing and I am not able to witness it. This saddens me because she is my first and only children. I am missing out on an important phase in my daughter's childhood that I will never be able to get back....

Affidavit of [redacted], dated July 20, 2006.

To begin, although counsel has provided a letter from the applicant's spouse's treating physician, confirming that he suffers from panic attacks and depression, no documentation was provided with the appeal outlining in detail when said conditions were initially diagnosed, the current status of the conditions, the severity of the situation, the short and long-term treatment plan, what type of assistance the applicant's spouse needs from the applicant specifically and what hardships he faces due to the applicant's continued absence. Said letter, written in December 2005, briefly and generally states that the applicant's spouse "is on Zoloft for panic attacks and depression...." *Letter from* [redacted], **dated December 7, 2005.** [redacted]s letter thus fails to establish that the applicant's spouse's continued mental health care and survival directly correlate to the applicant's physical presence in the United States.

Moreover, the record indicates that the applicant's spouse's parents reside nearby; no documentation has been provided to establish that they are unable to assist the applicant's spouse emotionally. It has also not been established that the applicant's child is unable to return to the United States to live with her father in the United States and/or that the applicant is unable to travel to Mexico, his native country, on a regular basis to visit his spouse.

Finally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychoemotional and family dynamics assessment letter is based on a single interview between the applicant's spouse and the mental health counselor. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of the continued separation from the applicant. However, his situation, if he 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 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 cannot go live in Mexico because I am financially supporting my wife [the applicant] and daughter who live there. I have a junior high school education and I will not be able to find work in Mexico. My wife does not work because she has not been able to find a job.

> I also financially support my parents. I would not be able to support my parents on a salary in Mexico, if I were able to find work there. My father was diagnosed with a non-cancerous brain tumor in April of 2001....
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> The doctor performed two surgeries on his brain to remove the tumor in April 15, 2001 and May 16, 2001. He also underwent radiation from several months.... My wife and I would take my father to hospital for his radiation....
>
> My father was extremely weak during those times. My father relied me for helped to pay the rent, make the insurance payments, pay for the grocery bill. When he came out of surgery, he needed someone to carry him into the shower and take care of his very basic personal needs....
>
> The doctor says there is a chance that my father's tumor will return. When this happens, there will be nothing further that the doctor will be able to do to treat him. I have to be in the U.S. to help my father, carry him to the shower, provide my mother with strength and financially support my parents.
>
> I am unable to move to Mexico to be with my wife because my father's medical condition can worsen at any moment and I need to be here for my parents, to help them. I would not be able to provide the support for my parent from Mexico. My father could not receive the same quality of care in Mexico that he receives in the U.S....

Supra at 1-2.

With respect to the hardships referenced above in relation to the applicant's spouse's father, the AAO notes that the applicants' spouse's father's tumor was diagnosed in 2001, five years prior to the appeal filing. No documentation has been provided from the treating physical that establishes the applicant's spouse's father's current medical condition, the gravity of the situation, the short and long-term treatment plans, what type of assistance the applicant's spouse's father needs from the applicant's spouse specifically and what hardships he would face were the applicant's spouse to relocate abroad. 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 parents are unable to return to Mexico, their home country, to reside with the applicant and her spouse. Although the applicant's spouse references substandard medical care in Mexico, no documentation has been provided to corroborate said assertions. 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 applicant's spouse's hardships were he to relocate to Mexico, it has not been established that the applicant and/or her spouse, a trucker, would be unable to obtain gainful employment in Mexico, thereby ensuring financial stability. Moreover, it has not been established that the applicant's spouse would be unable to travel to the United States on a regular basis to visit his parents.

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 not permitted to return to the United States, and moreover, 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 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.