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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: SAINT PAUL

Date:

JAN 27 2009

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Saint Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Argentina who 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 and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen wife and daughter.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the District Director*, dated June 23, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated July 24, 2006. Counsel contends that the district director minimized or ignored elements of hardship to the applicant's wife, and erroneously declared that the application was denied as an exercise of discretion. *Id.* at 4. Counsel asserts that the applicant's daughter's hardship should be considered, as it has an impact on the applicant's wife. *Id.* at 5. Based on the evidence submitted, counsel contends that the application should be approved. *Id.*

The record contains a brief from counsel; information on conditions in Argentina; a statement from the applicant; statements from the applicant's wife, mother-in-law, father-in-law, brother-in-law, sister-in-law, wife's aunt, wife's grandmother, wife's cousin, and friend; copies of birth records for the applicant, the applicant's wife, and the applicant's daughter; a copy of the applicant's marriage certificate; copies of mortgage and financial documentation for the applicant and his wife; tax records for the applicant and his wife; copies of passports for the applicant, the applicant's wife, and the applicant's daughter; copies of photographs of the applicant and his family, and; evidence of the applicant's entry to and exit from the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

In the present matter, the record indicates that the applicant was admitted to the United States on September 19, 2001 pursuant to the visa waiver program. The record does not clearly reflect the length of time for which the applicant was admitted, yet entry under the visa waiver program affords a maximum stay of 90 days, thus his status expired on or before December 18, 2001. The applicant remained in the United States until December 1, 2003. Accordingly, he accrued unlawful presence on or before December 18, 2001 until December 1, 2003, totaling approximately two years. The applicant reentered the United States on March 26, 2004 and he seeks to adjust his status to lawful permanent resident. Accordingly, he was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

On appeal, counsel asserts that the applicant's wife will suffer extreme hardship should the present waiver application be denied. *Brief from Counsel* at 4. Counsel identified a list of factors that U.S. Citizenship and Immigration Services must consider when determining whether a qualifying relative will experience extreme hardship, including: emotional impact on the qualifying relative; the ability of the qualifying relative to raise her U.S. citizen child in a foreign country; quality of life factors in the applicant's country, where the qualifying relative might relocate; the qualifying relative's age, length of residence in the United States, technical skills, and employability; length of the relationship between the applicant and qualifying relative; whether denial of the waiver application will result in permanent, forced family separation, and; economic hardship resulting from denial of the waiver application. *Id.* at 3-5. Counsel contends that the applicant's wife will experience hardship related to each of these concerns. *Id.* at 5.

The applicant's wife stated that she will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Applicant's Wife*, dated July 17, 2006. She explained that she and the applicant have been together for over four years, and that they share a close emotional bond. *Id.* at 1-2. She indicated that she and the applicant have future plans, including having more children, furthering their education, and owning and operating a farm. *Id.* at 2. The applicant's wife expressed that she does not wish to be separated from the applicant. *Id.* at 16.

In her statement of July 17, 2006, the applicant's wife explained that she endured serious hardships when visiting Argentina for three months. *Id.* at 3-4. She stated that she was unable to communicate without the use of the applicant as a translator, and thus she felt isolated and helpless. *Id.* at 4-5. The applicant's wife expressed dismay at the traditional role of women in Argentine society, and stated that her freedom would be limited there. *Id.* at 5-6. She explained that, as an American, she was taken advantage of in business dealings and shunned socially. *Id.* at 6-7. She described an incident in which she was humiliated by the applicant's grandfather in front of the applicant's family due to her American nationality. *Id.* at 8. She stated that the applicant informed her that she is a target for crime such as theft. *Id.* at 9. The applicant's wife described poor economic conditions that she observed in Argentina, and the rise of associated crime. *Id.* at 9-11.

The applicant's wife expressed concern for the lack of adequate health care in Argentina, and she recounted incidents in which she and the applicant had difficulty obtaining timely medical services for their daughter. *Id.* at 11-12.

She indicated that she and the applicant decided to reside in the United States due to the poor economic status of Argentina and lack of job opportunities there, her emotional hardship and desire to be near her family and friends in a familiar culture, and the lack of reasons to remain in Argentina. *Id.* at 14.

The applicant's wife asserted that her daughter would suffer hardships if they relocate to Argentina, including separation from a close family and the loss of opportunities present in the United States. *Id.* at 17. She explained that, should the applicant depart and she and her daughter remain in the

United States, her daughter would have significant emotional consequences due to being separated from her father. *Id.* at 22.

In contrast to the applicant's wife's assertions on July 17, 2006, the record contains a second statement from her dated January 14, 2005. The applicant's wife described her three months in Argentina with her husband's family as a positive experience. *Prior Statement from Applicant's Wife*, dated January 14, 2005. She explained that "it was so wonderful to get to know [the applicant's] family." *Id.* at 4. She provided that her daughter "was so interested in the language," she was "strangely comfortable," and "she had a wonderful time." *Id.* She stated that she "was very excited that [she and her daughter] were in Argentina with [the applicant.]" *Id.* She explained that "nothing in particular made [her] uncomfortable but just being so far from everything and everyone [she] knew." *Id.* The applicant's wife did not mention any negative encounters with the applicant's family, or difficulty with Argentine culture.

The applicant's wife indicated that she and the applicant rely on their business, [REDACTED] for economic support, and that the business would collapse without the applicant's contribution. *Statement from Applicant's Wife* at 22. Thus, she contends that she would endure significant economic hardship should she remain in the United States without the applicant. *Id.* She provided that she has a high school diploma and no specific or marketable skills, thus she would have difficulty securing employment that is sufficient to meet her and her daughter's needs. *Id.* at 22-23. She claimed that her family's monthly expenses total \$13,550. *Id.* at 23. She stated that, without their business, she would be compelled to sell their home to find more affordable housing. *Id.* She explained that she would need to find daycare services in order for her to work outside the home, which would require additional expense. *Id.* She asserted that she would lose the opportunity to attend college without the family business. *Id.* at 24.

However, in her prior statement, the applicant's wife asserted that she works three days per week, and that the applicant intended to begin working "for the same people [she does], also for Comcast . . ." [sic]. *Prior Statement from Applicant's Wife* at 5.

The applicant provided statements from his wife's family in which his wife's relatives attest to his and his wife's close relationship, and the emotional hardship the applicant's wife would suffer should the applicant depart the United States.

Upon review, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should he be compelled to depart the United States. The applicant has not established that his wife would endure significant hardship should she relocate to Argentina to maintain family unity. In the two separate statements discussed above, she described her experiences when residing there for approximately three months. However, these statements are inconsistent, as initially she reported no unusual hardship, and subsequently she indicated that she was affected by cultural challenges and problems with the applicant's family members.

It is noted that the applicant's wife has expressed interest in residing outside the United States, as she and the applicant previously intended to relocate to Spain after their three month sojourn in Argentina.

The applicant's wife stated that she has some Spanish language skill. While the applicant's wife would face some social and economic challenges if relocating to Argentina, the applicant has not shown that these consequences would be greater than those ordinarily expected when relocating to a new country. The applicant's wife has expressed that she is close with her family in the United States, and relocating to Argentina would require separation from them. Yet, as the applicant's wife expressed a willingness to reside in Spain, the record does not support that she would face unusual emotional hardship if she resides away from her family members in the United States.

The applicant's wife explained that she and the applicant rely on their business income, suggesting that they would endure economic hardship should they depart and no longer operate the business. Yet, the applicant has not submitted clear documentation of their business such to show its activities, labor and cost requirements, and profit. Thus, the AAO is unable to determine whether the applicant may hire others to operate the business while continuing to provide income for him and his wife. Nor has the applicant shown whether he and his wife have savings that may be used to meet the costs of relocating to Argentina. Nor has the applicant submitted an account of what his and his wife's economic needs would be in Argentina. Thus, the applicant has not submitted sufficient documentation to show that his wife would suffer significant economic hardship should she relocate to Argentina to maintain family unity.

The applicant submitted explanations of hardships to his daughter. Hardship to an applicant's child is not a direct concern in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. In the present matter, it is evident that any hardship to the applicant's daughter will have an impact on the applicant's wife. Yet, in her prior statement the applicant's wife indicated that her daughter adjusted well to three months in Argentina, thus the applicant has not shown that his daughter would experience significant hardship should they relocate there.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she relocate to Argentina to maintain family unity.

The applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant's wife would endure emotional consequences if she is separate from the applicant. Yet, the applicant has not distinguished these consequences from those commonly experienced by spouses who are separated due to inadmissibility.

The applicant's wife explained that she and the applicant have developed their business to allow her to work in the home and care for their daughter. Yet, in her prior statement the applicant's wife noted that she works three days per week. The record suggests that she would be required engage in more employment, possibly arranging childcare services, should she remain in the United States without the applicant. However, the applicant has not established that his wife's lifestyle, employment, or parenting changes would constitute extreme hardship.

As observed above, hardship to the applicant's daughter should be considered to the extent that it impacts the applicant's wife. The record reflects that the applicant's five-year-old daughter shares a close relationship with him, thus she would endure emotional consequences should she be separated from him for 10 years. It is reasonable that the applicant's daughter's hardship would create emotional hardship for the applicant's wife.

The applicant's wife asserted that she would experience significant economic hardship should the applicant depart the United States and she remain, largely due to the alleged collapse of their business. However, as noted above, the applicant has not submitted adequate explanation of his business in order for the AAO to assess the economic effect of his departure. The applicant has not submitted a description of his business, such as the services provided, the number of employees, the regular expenses and income, or overall profitability. The applicant's wife reported that her household's monthly expenses total approximately \$13,500 per month, which is the equivalent of approximately \$162,600 per year. However, the most recent tax record provided by the applicant reports that the applicant and his wife earned a total of \$53,434 in 2005, primarily composed of business income. The applicant has not explained whether his business has become more profitable since 2005, or whether he and his wife have new sources of income to meet their claimed expenses. It is noted that the applicant and his wife own real estate with a monthly mortgage payment totaling approximately \$3,400, or approximately \$40,800 per year. The applicant has not stated how he and his wife meet this and their other expenses. Nor has the applicant shown that he is unable to hire employees to perform the work he presently provides for his company. Accordingly, the applicant has not established that his wife would suffer significant economic hardship should she remain in the United States without him.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife would experience extreme hardship should she remain in the United States. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his U.S. citizen wife, as required by section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.