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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: JAN 07 2010

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in November 1998 and did not depart the United States until October 2005. 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children, born in 2002 and 2004.

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 November 17, 2006.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is requesting a waiver of inadmissibility.

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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).

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 himself 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 and/or their children 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, academic and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to her husband's long-term absence. She notes that she is rarely able to visit the applicant due to financial constraints. In addition, the applicant's spouse notes that her children are suffering emotional hardship due to long-term separation from their father, which, in turn, is causing extreme hardship to the applicant's spouse, the only qualifying relative in this case.²

² As the applicant's spouse states,

I notice my son has a more tough and resentful temper.... He is always getting mad and hitting my daughter and causing fight among them. I know that, coming from a family in which I was 1 in 3 sisters, fighting is normal but at an older age not at 2 years old. I see him sometimes acting out to get some attention.... I think if his father were here he could settle him down and maybe hang out with him.... Now my daughter is more distant to me. She spends so much of her time with my mother that I wonder if she knows who her dad is or that she has one.... She was just 2 ½ years old when he left so she really

Moreover, she notes that due to her husband's absence, she is thinking of quitting her studies to become a court reporter because she is unable to work full-time, care for her children, and pursue her studies, all at the same time, without the applicant's daily support. *Letter from* [REDACTED]

Finally, the applicant's spouse asserts that she is experiencing financial hardship as the applicant is not in the United States to assist with the finances of the household.³ She states that during the time the applicant was in the United States, she was dependent on his income, as it would help pay for the bills and necessities. Without his income, the applicant's spouse states that she is in debt to numerous entities and she does not know when she will be able to repay. She notes that her children are not covered by any type of insurance. She further asserts that due to her spouse's inadmissibility, she was forced to move out of their apartment prior to the contract expiration, as she was unable to pay the rent, and consequently, has a bad renting history. *Letter from* [REDACTED] dated February 2, 2006.

In support of the hardships referenced by the applicant's spouse, documentation of past due bills has been provided, to establish the financial hardship she is experiencing due to her spouse's inadmissibility. In addition, documentation in the form of a psychological evaluation and articles have been provided, outlining the negative ramifications of separating a child from a parent, which include disturbances in children's relationships and developmental delays, and the specific hardships the children are encountering since their separation from their father, including medical problems and developmental delays, specifically, speech problems and hyperactivity. *See Evaluation from* [REDACTED] *Clinical and Forensics Psychology*, dated January 10, 2007.

Due to the applicant's inadmissibility, the record indicates that the applicant's U.S. citizen spouse has had to assume the role of primary caregiver and breadwinner to two young children, both suffering from numerous hardships due to long-term separation from their father, without the complete support of the applicant. The applicant's spouse is considering ceasing the pursuit of her studies due to financial hardship and the need to care for her children as a single parent while maintaining full-time employment. The record reflects that the applicant's spouse needs her husband on a day to day basis, to help with the care of their children and to provide critical financial support. The AAO thus concludes that based on the totality of the circumstances, were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

doesn't remember him leaving. My son was only a year old.... I come from a family in which my mom was a single parent taking care of my two younger sister and me. I saw how hard she struggled.... So at that time, as so many children do, dream of a better happier family and dream of a home with kids and a loving husband....

Letter from [REDACTED]

³ The record indicates that prior to the applicant's departure from the United States, he had been gainfully employed, since August 2000, as an Electrician for Aqua Power Electric Inc. *See Form G-325A, Biographic Information*, dated January 12, 2006.

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. This criteria has not been addressed by the applicant and/or his spouse. The only reference to this criteria is made by counsel, who notes that the applicant's spouse's entire family is in the United States, including her mother, to whom she is very close, and a relocation abroad would cause her hardship. In addition, counsel asserts that a relocation to Mexico will force the applicant's spouse to abandon her educational dreams. *Brief in Support of Appeal*. Counsel further notes that the applicant's children would suffer in Mexico due to unfamiliarity with the language and substandard academics, and upon their return to the United States, they will be behind in school. *Id.* at 6-7.

Counsel has not provided any documentation to substantiate the hardship claims referenced in her brief. 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). As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate aboard to reside with the applicant due to his inadmissibility.

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