U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: MAY 19 2010
CDJ 2006 727 139

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Mexico City, Mexico. 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 Mexico 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 again seeking admission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In a decision dated November 16, 2007, the District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her continued inadmissibility. The application was denied accordingly. *See Decision of District Director* dated November 16, 2007.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible for having procured admission through fraud or misrepresentation under 8 U.S.C. § 1182(a)(6)(C). In his decision, the District Director indicated that this ground of inadmissibility was not applicable (n/a). The AAO concurs with this determination, finding this ground of inadmissibility irrelevant to the applicant's application.

In addition, in his appeal brief, counsel contends that the applicant was being represented by incompetent counsel when she filed the Waiver of Grounds of Inadmissibility (Form I-601). Nonetheless, the applicant has subsequently filed a Notice of Appeal (Form I-290B), and we have conducted an appellate review of her application de novo.

Finally, counsel asserts that the applicant's spouse faces emotional, psychological and physical hardships as a result of the separation from his wife, as well as financial hardship. Counsel also indicates that the applicant's child has suffered from health issues living in Mexico.

The record contains an approved Petition for Alien Relative (Form I-130), a Form I-601, an affidavit from the applicant's spouse, a decision from the District Director, a Form I-290B, an appeal brief, a birth certificate of the applicant's child, a letter from [redacted] relating to the health of the applicant's child and evidence relating to the disbarment of the applicant's former attorney.

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.

The record indicates that the applicant entered the United States without inspection in June of 2000, and remained until October 22, 2006 when she voluntarily departed. The applicant thus accrued unlawful presence from when she entered the United States in June 2000 until October 22, 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is 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 a period of more than one year.

The applicant's qualifying relative in this case is her spouse, who is a naturalized United States citizen.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Mexico and in the event that he remains in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The evidence submitted relating to the potential hardships facing the applicant and her family consists of the appeal brief written by counsel for the applicant, the qualifying spouse's affidavit, the letter from [redacted] and the information relating to the disbarment of the applicant's former counsel, which has been addressed above.

In the applicant spouse's affidavit, he states that he is experiencing emotional hardship including psychological anxieties, panic attacks and depression as a result of his separation from the applicant and his child. The applicant's spouse, who is of Fijian descent, indicates that he is not receiving any support from his family in the United States because they disowned him when he refused to marry a [redacted], and instead married the applicant. He also expresses financial concerns relating to his difficulty in supporting two households, and his fear that his emotional issues will affect his job security. In addition, the applicant's spouse also mentions his concern for the psychological health of his child living without a mother, and explains that the child cannot live in Mexico with the mother due to health issues.

The AAO finds that the applicant's spouse is not suffering an "extreme hardship" as a consequence of being separated from the applicant. While he clearly is suffering due to the separation from his wife emotionally and possibly financially, these hardships are not outside the usual difficulties encountered when a family member is removed. Moreover, these hardships have not been corroborated by independent evidence such as a doctor's letter relating to the health issues facing the qualifying spouse or documentation relating to his expenses, e.g. mortgage and/or rent payments, child care expenses and other expenses incurred by him.

The AAO likewise finds that the applicant has not met her burden in showing that her spouse would suffer extreme hardship if he relocated to Mexico. The record contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant resides or other locations where she and her spouse would likely reside. If the applicant's spouse relocated to Mexico, he would no longer experience the emotional hardships associated with separation or bear the financial obligation of supporting two households. The applicant's spouse would likely lose his employment if he left the United States, but this is a common result of removal or inadmissibility—the applicant has failed to submit detailed evidence concerning her spouse's current employment and available employment opportunities in Mexico. The record reflects that the applicant's spouse is a native of Fiji. While he may experience the hardships associated with adjusting to a foreign culture, such evidence has not been provided. The applicant has also failed to address whether she has family ties in Mexico, and the AAO is thus unable to ascertain whether and to what the extent her family would assist in supporting her and her family. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant's spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

While the record also contains a letter from the doctor in Mexico regarding the applicant's child, the letter provided little information regarding the health conditions that the child encountered in Mexico and could potentially face if the child accompanied her father to Mexico. The translator of

the doctor's note was also unable to fully translate the letter, and referred to various parts of the letter as "illegible."

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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) 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.