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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) DATE:
(CDJ 2004 815 183 relates)

MAY 25 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:

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,

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 1996 and did not depart the United States until October 2006. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in October 2006. 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. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children, born in 1999 and 2006.

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 23, 2007.

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

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 or their children cannot be considered, except as it may affect the applicant's spouse.

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 contends that he will suffer emotional and financial hardship if the applicant's waiver request is not granted. In a declaration he states that he is experiencing anguish and distress due to long-term separation from his spouse. He further notes that he is the primary caregiver to his eldest son while his spouse and his youngest son reside in Mexico, and the family separation and the responsibilities of caring for his eldest on his own are causing him hardship. He contends that prior to departing the United States, his spouse was the primary caregiver to the children- cooking, cleaning, ensuring they went to all the medical appointments, taking care of the extracurricular activities- thereby permitting him to work and provide financially for his family. He asserts that he can not travel to Mexico often to see his spouse and youngest child because he is financially responsible for the family and he can not afford to miss work. *Affidavit of*

The applicant's spouse further notes that his oldest son is suffering due to long-term separation from his mother and brother, thereby causing the applicant's spouse hardship. Moreover, the applicant's spouse contends that his youngest child relocated to Mexico to reside with the applicant due to his young age, but he is sick often due to unfamiliarity with the food products and the different water;

his long-term separation from his youngest child and his worries about the child's health while in Mexico are causing additional hardships to the applicant's spouse. *Supra* at 1.

Finally, the applicant's spouse notes that he is self-employed as a brick layer contractor, with a crew of 6-7 men. He asserts that his job is demanding but his spouse played an integral role in supporting and advising him and providing the majority of the child rearing and domestic assistance so that he could work but due to her long-term absence, his business is suffering, as he is caring for his eldest child on his own, oftentimes having to take time off of work to see him, while separated from his spouse and youngest child. *Supra* at 1 and *Letter from* [REDACTED] dated September 29, 2006.

In support, a letter has been provided by [REDACTED]. Dr. [REDACTED] confirms that the applicant's spouse is suffering anxiety and depression due to long-term separation from his spouse and youngest child. Due to his spouse's absence, the applicant's spouse is struggling to manage his business, take care of all domestic chores, and raise his eldest son without the benefit and support of his spouse, and the presence of his youngest child. Due to these circumstances, [REDACTED] concludes that the applicant's spouse should participate in individual therapy to address his depression and anxiety problems, and further recommends that the applicant's eldest son be referred for psychological services to determine how well he is coping with the trauma of separating from his mother and brother for such an extended period of time. *Psychological Immigration Evaluation from* [REDACTED], dated January 9, 2008.

In addition, numerous letters have been provided, from the applicant's spouse's mother, a general contractor who has worked with the applicant's spouse in the past, the applicant's spouse's sibling, and two family friends, corroborating the hardships the applicant's spouse is suffering due to long-term separation from his spouse and youngest child and the hardships the applicant's eldest child is suffering due to long-term separation from his mother and brother.

The record reflects that the cumulative effect of the emotional, professional and financial hardships the applicant's spouse is experiencing due to his spouse's inadmissibility rises to the level of extreme. The applicant's spouse is residing in the United States with his eldest son to ensure that his son does not suffer academic disruption, while his spouse and youngest child are residing in Mexico. The long-term separation from his spouse and youngest child, the pressures inherent in maintaining his business to financially support his spouse and two children, and the responsibilities of being the primary caregiver to his eldest child, without the daily support and encouragement of his spouse, are causing the applicant's spouse extreme hardship. As such, based on a totality of the circumstances, the AAO concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

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. With respect to this criteria, the applicant's spouse contends that he fears for his children's safety and is concerned about substandard academics and health in Mexico. *Supra* at 1. No documentation has been provided

establishing the specific hardships the applicant's spouse, the only qualifying relative in this case, would face were he to relocate to Mexico, his native country, to reside with the applicant due to her inadmissibility. 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 such, the applicant has failed to establish that her U.S. citizen spouse, a native of Mexico, would suffer extreme hardship were he to relocate abroad to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that although it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship if the applicant were not permitted to reside in the United States, 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 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.