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U.S. Department of Homeland Security  
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**AUG 12 2009**

FILE:

(CDJ 2004 808 782)

Office: CIUDAD JUAREZ, MEXICO

Date:

IN RE:

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:

SELF-REPRESENTED

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. Glisson

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, 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 seeking readmission within ten years of his last departure from the United States and pursuant to section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii)(I), as an alien classified as having a mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The AAO notes that while the Officer-in-Charge found the applicant inadmissible under section 212(a)(1)(A)(iii)(I) of the Act, he found the applicant to have met his burden for a section 212(g) waiver under the Act. The Officer in Charge also found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative, as required for a waiver of a section 212(a)(9)(B)(i)(II) inadmissibility. The application was denied accordingly. *Decision of the Officer in Charge*, dated June 26, 2006.

On appeal, the applicant contends that his spouse has suffered and will continue to suffer extreme hardship by being separated from the applicant. *Form I-290B and attached psychological statement from [REDACTED], Licensed Clinical Psychologist*, dated July 21, 2006.

In support of these assertions the record includes, but is not limited to, a letter relating to the mental health problems of the applicant's spouse; a statement from the applicant's spouse; a statement from the mother of the applicant's spouse; a statement regarding car payments; a telephone bill; a car title; loan statements; a car insurance policy; and a credit card statement; an acknowledgment of suspension or revocation of driver's license; and a statement from the Chesapeake Bay Alcohol Safety Action Program. 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 application, the record indicates that the applicant entered the United States without inspection in April 2001 and remained until October 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 26, 2005; *OF-194, Refusal Worksheet*. The applicant, therefore, accrued unlawful presence from April 2001 until he departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his October 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or the United States, as she 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.

If the applicant's spouse relocates to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record fails to address whether the applicant's spouse has any type of familial or cultural ties to Mexico. The record does not address the extent to which the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The record does not address what employment opportunities the applicant's spouse would have in Mexico, nor does the record document through published country conditions reports the economic situation in Mexico and the cost of living. Accordingly, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse **will suffer extreme hardship**. **The applicant's spouse was born in the United States.** *Birth Certificate*. The applicant's spouse is a patient at the Behavioral and Neuropsychiatric Group whose present symptoms include severe depression as well as panic disorder with progressively worsening agoraphobia. *Letter from [REDACTED] Licensed Clinical Psychologist*, dated July 21, 2006. In the absence of the applicant, the applicant's spouse has developed an anxiety disorder of such proportions that she was unable to function at a job that she had held for seven years. *Id.* She was forced to leave the job due to panic attacks and debilitating anxiety. *Id.* She has since begun a new job with less income and less responsibility. *Id.* It is becoming increasingly difficult for her to face work and social situations or to interact effectively with people under any circumstances. *Id.* Her depression and anxiety are so overwhelming that she is not able to get up and go to work. *Id.* Her dysfunctional alcoholic family background has also left the applicant's spouse with dependency issues, which are, in part, responsible for the severity of her current depression. *Id.* Currently, the applicant's spouse has been functionally immobilized by symptoms of depression and anxiety. *Id.* She was recently prescribed the anti-depressant Prozac. *Id.* The severity of her depression, compounded by her panic attacks and agoraphobia, makes the applicant's spouse at risk for suicide and for increasing debility in areas of everyday living. *Id.* The psychologist asserts that many, if not all, of these symptoms would be significantly reduced if the applicant's spouse were able to be reunited with the applicant as he has been her major source of emotional support and this support has allowed her to extricate herself from her family of origin and to begin to build a positive self-image. *Id.* The applicant's spouse notes that it has been incredibly hard for her and the applicant to be apart. *Statement from the applicant's spouse*, dated November 6, 2005. She notes that the loneliness is enough to push even the strongest person into despair. *Id.* She also notes that she has encountered financial difficulties and is unable to cover all of her expenses. *Id.* The record includes various bill statements showing the expenses of the applicant's spouse. *Statement regarding car payments; telephone bill; loan statements; a car insurance policy; and a credit card statement*. The mother of the applicant's spouse notes that she has helped her daughter and the applicant with many of their financial obligations, but that she has reached her limit. *Statement from the mother of the*

*applicant's spouse*, dated November 1, 2005. When looking at the aforementioned factors, particularly the psychological condition of the applicant's spouse as documented by a licensed healthcare professional, the financial situation of the applicant's spouse and how her mental conditions have affected her ability to work, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States without him.

However, as the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she relocates to Mexico, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) 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) 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.