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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

[redacted]

H2

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: AUG 26 2009

IN RE: [redacted]

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

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).

Ellen C. Johnson

John F. Grissom
Acting 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 record reflects that 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 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 is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated November 13, 2006.

The record contains, *inter alia*: a mental health evaluation for the applicant's wife, [redacted], and the couple's daughter; a letter from [redacted] two letters of support from the couple's church; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the district director found, and the applicant does not contest, that the applicant entered the United States in 1991 without inspection and remained until January 2006. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure from the United States in January 2006. The applicant, therefore, accrued unlawful presence for over one year. He now seeks admission within ten years of his 2006 departure. Accordingly, he is 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, [redacted] states that she would suffer extreme financial hardship if her husband's waiver application were denied. [redacted] states she is not working and may lose her place of residence because she cannot pay the rent and all of her bills. She states she does not want to obtain public assistance. In addition, [redacted] claims the couple's daughter cries and wants her father to come home. [redacted] contends she cannot go to Mexico to be with her husband because she needs to pay all of the bills they acquired in the United States. She states that if they "have to return to start all over again, [they] may not be so lucky in regaining [their] home and employment." [redacted] states she is an American and accustomed to the American way of life. She states their daughter could not adjust to living in Mexico and may become sick due to the climate and environmental conditions, such as the fact that the applicant's parents' house does not have electricity. Finally, [redacted] states she suffers from migraine headaches due to emotional stress. *Letter from* [redacted] undated.

A mental health evaluation in the record states that when [redacted] was five years old, she was raped by a cousin who was ten years older than her. According to the evaluation, the cousin threatened to kill [redacted] and she did not tell anyone about the rape for a long time as she thought it was her fault.

The evaluation further describes that when [redacted] was a teenager, she would not eat, lost her hair, had no periods, and reached a low weight of eighty pounds. Recently, [redacted] "has felt like the only thing she can control is her diet, so she has been eating minimally." [redacted] has nightmares approximately three times per week and wakes up fearful, sweating, and shaky. During the day, Ms. [redacted] feels "panicky[,] . . . hear[s] a noise in her head, . . . feels [her] heart racing[, feels] light headed, ha[s] hot flashes, and difficulty with breathing." In addition, [redacted] was sick a lot during her school years and has a history of depression. The evaluation states she has had thoughts of death at times and felt depressed enough to think about hurting herself, but knows she would not actually hurt herself because her daughter needs her. The evaluation concludes that [redacted] has chronic post-traumatic stress disorder in partial remission, anxiety, and "[i]nadequate calorie intake due to restricting intake." The evaluation states that [redacted] agreed to continue with counseling and medication. *Wenatchee Valley Clinic, Behavioral Health Progress Note*, dated December 7, 2006; *Wenatchee Valley Clinic, Walk In Clinic*, dated November 30, 2006; *see also Wenatchee Valley Clinic, Progress Note*, dated December 1, 2006 (stating [redacted] has a history of depression that is currently under treatment).

A letter from [redacted] pastor states that [redacted] has sought pastoral counseling several times during the last six months. According to the pastor, [redacted] has been "extremely distraught, depressed and sad" over her husband's immigration status. *Letter from* [redacted] dated December 6, 2006.

After a careful review of the record, there is insufficient evidence to show that has suffered or will suffer extreme hardship if her husband's waiver application were denied.

The AAO recognizes that [redacted] has endured hardship since her husband departed the United States and is sympathetic to the family's circumstances. The AAO finds that if [redacted] had to remain in the United States without her husband, she would suffer extreme hardship. The record shows that [redacted] endured a traumatic event as a child, has struggled with an eating disorder for many years, has a history of depression, including thoughts of suicide, and has chronic post-traumatic stress disorder and anxiety. Based on her fragile mental state, the AAO finds that [redacted] would suffer extreme hardship being separated from her husband if her husband's waiver application were denied.

Nonetheless, there is insufficient evidence to show that _____ would experience extreme hardship if she moved to Mexico with her husband to avoid the hardship of separation. Her claim regarding needing to pay her bills is not supported by evidence in the record reflecting what bills she would have to pay were she to relocate to Mexico to be with her husband. The situation of being an American accustomed to American ways does not rise to the level of extreme hardship. Similarly, her claim that her daughter would be unable to adjust to living in Mexico is unsupported by the evidence. [redacted] does not claim that her daughter has any physical or mental health issues that would make her transition to living in Mexico more difficult than would normally be expected. Although [redacted] contends she suffers from migraine headaches, there is no documentary evidence to support her claim, such as a letter from a health care professional, and [redacted] does not claim her condition could not be adequately treated in Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.