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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**

H3

FILE:

(CDJ 1997 829 331)

Office: CIUDAD JUAREZ, MEXICO

Date: APR 01 2009

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:

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. Grissom, 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 her last departure from the United States. The applicant is married to a lawful permanent resident and the mother of a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their child.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated February 17, 2006.

On appeal, counsel submits declarations from the applicant's spouse and mother, as well as a psychiatric evaluation of the applicant's spouse, as further proof of extreme hardship to a qualifying relative, as necessary for a waiver under 212(v) of the Act. *Form I-290B*.

In support of the applicant's claim to extreme hardship, the record includes, but is not limited to, a statement from the applicant's spouse; a psychological evaluation; a statement from the applicant's mother; a statement from the applicant's spouse; a statement from [REDACTED]; copies of money orders; gas, utility, cable, credit card and telephone bills; earnings statements for the applicant's spouse; and statements from the applicant's friends. 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 February 1999 and voluntarily departed the United States, returning to Mexico in January 2003. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated April 22, 2005. The applicant, therefore, accrued unlawful presence from February 1999 until she departed the United States in January 2003. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2003 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 or her child experiences as a result of her inadmissibility is not directly relevant to the determination of whether she 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 he resides in Mexico or 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Birth*

*certificate.* The applicant's spouse suffers from a rare mental disease caused by eating contaminated pork meat known as Cysticercosis. [REDACTED] *Licensed Clinical Psychologist*, dated March 13, 2006. As reported in the psychological evaluation of the applicant's spouse, the neurologist treating the applicant's spouse has indicated he suffers from seizure disorders and experiences confusion and anxiety. *Id.* The AAO notes that the applicant's spouse's neurologist is in Mexico and has prescribed anticonvulsant medications, including Zentel, Tegretol, and Decadron (injection), prn. *Id.* While the AAO acknowledges the serious health condition of the applicant's spouse, the record demonstrates that he can receive medical care in Mexico. The applicant's spouse states that he cannot move to Mexico because his wages are extremely important to his support of his family and he does not want to lose his job in masonry. *Statement from the applicant's spouse*, dated November 3, 2005. He asserts that the labor market in Mexico is currently going through hard times and it will be difficult for him to get a job that pays well. *Id.* The record, however, does not support this claim as it does not include published country conditions reports or other documentation establishing the economy and employment opportunities available in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. 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)). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Birth certificate.* In addition to his diagnosis of Cysticercosis, the applicant's spouse has also been diagnosed with depression. [REDACTED] *Licensed Clinical Psychologist*, dated March 13, 2006. He has been prescribed Paxil, Prozac and Xanax in an attempt to manage his depressive disorder. *Id.* His symptoms of anxiety, panic, and depression fluctuate in relation to the presence or absence of his family. *Id.* The applicant's spouse states that he has double expenses, as he sends money to the applicant in Mexico and pays the bills and debts in the United States. *Statement from the applicant's spouse*, dated November 3, 2005. The record includes a statement from [REDACTED], showing money sent to the applicant in Mexico, as well as copies of money orders with the applicant's spouse's name indicated as the purchaser. *Statement from [REDACTED]*, dated 2005; *copies of [REDACTED] money orders.* The record also includes copies of gas, utility, cable, and telephone bills for the applicant's spouse. See *bills*. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States without her.

The applicant's mother states that she is a lawful permanent resident of the United States. *Statement from the applicant's mother*, undated. The AAO notes that the record does not contain any documentation showing that the applicant's mother is a lawful permanent resident. As such, the AAO finds that the applicant has not met her burden in showing that the applicant's mother is a qualifying relative for purposes of this case.

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 he relocates to Mexico, the

applicant is not eligible for a waiver of her 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 she 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.