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U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: FEB 05 2009

(CDJ 2002 748 049 relates)

IN RE: [redacted]

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

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).

Ellen C. Johnson

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 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for more than one year. The applicant is married to a naturalized 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 her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated February 10, 2006.

On appeal, the applicant's husband contends he has suffered extreme hardship since his wife and son left the United States.

The record contains, *inter alia*: a letter from the applicant's husband, [redacted], a letter from [redacted] licensed clinical counselor; a letter from [redacted] physician; financial documents; and a copy of [redacted] naturalization certificate. 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 record indicates that the applicant entered the United States without inspection in April 2000 and remained until April 2005 when she returned to Mexico. The applicant accrued unlawful presence for five years. She now seeks admission within ten years of her April 2005 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B) 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 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. Once extreme hardship to a qualifying relative 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.

The record reflects that the applicant and her husband married on January 28, 1981, in Mexico. According to [redacted] prior to his wife entering the United States, he worked in the United States as a migrant farm worker for one season each year, then lived in Mexico for the remaining ten months of the year. *Letter from* [redacted] dated April 20, 2008. [redacted] worked in Arizona his first year, then worked in California for the next twelve years. *Id.* After thirteen years, the applicant was "tired of having a husband for short periods of time," and entered the United States illegally in 2000. *Id.* [redacted] states that after his wife left the United States in April 2005, he "went into despair and started drinking heavily . . . in order to survive their absence." *Id.* He claims he does not remember much from the period of time due to his heavy drinking and would sometimes not even change his clothes. *Id.* [redacted] claims he has been sober for four months, does not want to go back to his old ways, and is "not sure [he] can survive their absence for much longer!" *Id.* He states he does not eat or sleep well and cries whenever he thinks how his life has changed. *Id.* In his Notice of Appeal, [redacted] writes that he is in a "big depression" and that his doctor told him to either control himself or he will drive himself crazy. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated March 9, 2006. He further states that he has moments when he thinks of getting a gun and shooting himself, and that being apart from his

family is killing him. *Id.*

A letter from [redacted] counselor states that [redacted] "keeps thinking he would be better off dead." *Letter from* [redacted], dated April 16, 2008. The counselor states [redacted] has trouble sleeping, a low appetite, an erratic eating pattern, and observes that "his physical condition is too weak. . . . He seems fragile, and inept. . . ." *Id.* The counselor states [redacted]'s memory is weak and his concentration is getting worse every day because he cannot stop worrying about his wife and children in Mexico. *Id.* She further states that he is taking an anti-depressant. *Id.* The counselor concludes that in her professional opinion [redacted] "is very anxious and depressed, and on the verge of a nervous breakdown. His symptoms are severe." *Id.*

A letter from [redacted] physician states that [redacted] has "clinical severe depression and melancholy as well as anxiety [and] suicidal ideation. . . ." *Letter from* [redacted] dated March 3, 2006. [redacted] physician states that he prescribed [redacted] an anti-depressant and recommended counseling. *Id.*

After a careful review of the record, it is not evident that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

[redacted]'s claim almost exclusively addresses the hardship he has suffered by remaining in the United States without his wife and children. The AAO finds that [redacted] has suffered extreme hardship since his wife and children left the United States. The record shows that [redacted] is severely anxious, depressed, and on the verge of having a nervous breakdown. If the applicant's waiver application were denied, the record evidence indicates [redacted] would be unable to cope with the separation, would likely begin drinking heavily again, and may attempt suicide. Considering [redacted]'s mental health, and the fact that the applicant and [redacted] have been married for over twenty-eight years, the effect of separation from the applicant on [redacted] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 303 (BIA 1996) (finding extreme hardship to the applicant's wife based on her history of depression and a suicide attempt); *cf.* [redacted] *v. Mukasey*, 271 Fed.Appx. 592, 593-94 (9th Cir. 2008) (unpublished) (stating that a "psychiatrist's opinion that [redacted]'s mother will 'likely . . . *attempt suicide*' [if her son is deported] is . . . highly probative of extreme hardship") (emphasis in original).

Nonetheless, there is insufficient evidence to show that [redacted] would experience extreme hardship if he moved back to Mexico to be with his wife and children to avoid the hardship of separation. The record shows that [redacted] was born in Mexico and worked in the United States as a migrant farm worker for thirteen years, living in Mexico for ten months of the year and the United States for two months of the year. *Letter from* [redacted], *supra.* Although [redacted] claims there are no jobs in his hometown, *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), supra,* there is no documentary evidence in the record to support his claim and he fails to address whether he could resume his work as a migrant farm worker as he had previously done for over a decade. In any case, [redacted] statement that his wife and son help financially support him,

suggests they found jobs in Mexico, undercutting his claim that there are no jobs in his hometown. *Id.* ("There is not jobs in my hometown and my family cannot find a job there. . . . See copies of my check st[u]bs and copy of my bills[.] My wife and my son help me a lot.").

To the extent [redacted] claims that denying his wife's waiver application causes him extreme financial hardship, there is insufficient evidence in the record to support his claim. Although there are copies of [redacted]'s pay stubs, bills, and bank statements in the record, there is no evidence addressing to what extent the applicant helped to support the family while she was in the United States. There are no tax documents in the record, no evidence from employers verifying the applicant's past or current employment, and no documentation regarding her wages. There are no letters indicating that any of [redacted]'s accounts are past due and there is no information regarding how much rent or mortgage [redacted] pays on a regular basis. Therefore, there is insufficient record evidence showing extreme financial hardship. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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.