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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

H6

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 0 9 2010

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:

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

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City. 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 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. § 1182(a)(9)(B)(v), in order to reside with his wife and children 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 District Director*, dated January 26, 2007.

The record contains, *inter alia*: a letter from the applicant's wife, [redacted]; a letter from [redacted]'s nurse and copies of [redacted]'s medical records; financial and tax documents; a copy of the birth certificate of the couple's U.S. citizen child; several letters from the couple's children's school; several letters of support; and 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)(i)(II) of the Act provides, in pertinent part:

> Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (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 shows, and the applicant does not contest, that he entered the United States in 1987 without inspection and remained until February 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in February 2005. Therefore, the applicant accrued unlawful presence of over seven years. He now seeks admission within ten years of his 2005 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). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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, the applicant's wife, [redacted] states that she and the applicant got married on May 20, 1999, and have one child together. [redacted] contends that her husband has supported her two children from a previous relationship as if they are his own children. [redacted] states that since the applicant's departure from the United States, she has been under incredible stress both financially and emotionally. In addition, she contends that in September 2006, she was diagnosed with hyperthyroidism that was brought on by increased stress. She contends that the hyperthyroidism causes her to experience hot flashes, heart problems, hypertension, headaches, and severe fatigue. Furthermore, [redacted] contends that she was put on medication for hypertension in October 2006 and that the medication causes her to have severe pain in the back of her head and neck, dizziness, fatigue,

and anxiety. According to [redacted], her doctors think the hypertension is exacerbated by the stress she is experiencing. She states that "[her] health continues to deteriorate with no end in site." [redacted] fears that if her health continues to decline, she will be unable to continue to work and provide for her daughters. Moreover, [redacted] contends her daughters have been greatly affected by her husband's absence and have suffered emotional problems as a result. She states she has had several conferences at her daughters' school to discuss her children's problems. [redacted] also states that she has been forced to get a loan to meet her family's needs. She states she got a loan from a family friend and that her husband will pay it back when he returns to the United States, but that if he is not permitted to return, a lien will be filed against her home. *Letter from* [redacted], dated February 22, 2007.[1]

A letter from a nurse practitioner states that [redacted] has been a patient since 1997 and that she has been in good health for the majority of the time. The letter states that [redacted] was diagnosed with hyperthyroidism in September 2006 and takes two medications daily. *Letter from* [redacted], dated February 14, 2007. A copy of a prescription in the record indicates that one of the medications is for high blood pressure.

A letter from a school psychologist states that two of the couple's daughters, [redacted] and [redacted] have been referred for counseling. According to the psychologist, both girls appear severely impacted by their father's absence. The psychologist states that [redacted] who is usually cheerful and outgoing, now cries frequently, reports vague somatic concerns, and wants to stay home. The psychologist contends [redacted] demeanor has significantly changed and she appears sad and distracted. The psychologist also states that when questioned, [redacted] readily states that she misses her father. With respect to [redacted], the psychologist contends that he has witnessed a steady decline in her grades. According to the psychologist, [redacted] had been one of the best students in her class, if not the school. However, she now is markedly less focused and states that she is worried about her mother. *Letter from* [redacted], dated February 13, 2007.

A letter from [redacted], teacher states that [redacted] would come into the classroom crying and not wanting to attend school, which is very unusual for a third grader. The teacher states that she suggested [redacted] see the school psychologist. According to the teacher, [redacted] attends weekly counseling sessions with the psychologist and things have "improved somewhat," although there are days when [redacted] is silent and withdrawn. The teacher further states that [redacted] works every day, brings the girls to school, and attends conferences and school events. She states that she does not know how

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[1] To the extent the record contains three letters from the applicant and another, undated letter from [redacted], the letters are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these letters cannot be considered.

[redacted] does it all and notes that [redacted] looks very tired and worn out. In addition, [redacted] teacher states that [redacted] language and math skills are somewhat below grade level, but she believes it is because [redacted] first language is Spanish and she needs time to become proficient in English. *Letter from* [redacted], dated February 12, 2007; *see also Letter from* [redacted], dated February 15, 2006 ([redacted] former teacher stating that the applicant "was instrumental in guiding [redacted] academically [and that s]he was one of [the] top students because of the help that her father . . . provided her").

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

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. The AAO finds that if [redacted] remains in the United States without her husband, she would suffer extreme hardship. Documentation in the record shows that [redacted] is a single parent to two young children, both of whom have been having problems at school since the applicant's departure. *Letter from* [redacted] *supra; Letter from* [redacted] *supra.* The record also shows that [redacted] has hyperthyroidism and high blood pressure and that she has been prescribed medications to treat these conditions. *Letter from* [redacted] *supra.* Moreover, the record indicates that [redacted] has suffered financial hardship. According to the most recent tax documents in the record, in 2006, [redacted] earned $9,524 in wages. Documentation in the record indicates that her mortgage is $1,675 per month and that she has had to obtain a loan from a friend in order to meet her living expenses. *Letter from* [redacted] dated February 9, 2007 (stating that he has loaned [redacted] $11,400 since January 2006). Based on this information, the AAO finds that if [redacted] remains in the United States, she would experience extreme hardship if her husband's waiver application were denied.

Nonetheless, [redacted] does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. The record shows that [redacted] was born in Mexico and that her children's first language is Spanish. *Letter from* [redacted]. [redacted] does not claim that she or her children have any physical or mental health issues that would make her transition to moving back to Mexico again more difficult than would normally be expected. To the extent [redacted] has hyperthyroidism and high blood pressure, she does not claim she cannot receive adequate treatment in Mexico. In sum, there is no suggestion that [redacted]'s return to Mexico with her children would cause hardship beyond what would normally be expected.

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.