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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CIUDAD JUAREZ Date: APR 06 2009  
(CDJ 2003 688 060 relates)

IN RE: [REDACTED]

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

John F. Grisson  
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 AAO will dismiss the appeal.

The applicant is a native and citizen of Mexico who was found 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 for more than one year and seeking readmission within 10 years of his last departure. He was further found inadmissible under 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 physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others (alcohol abuse.) The applicant seeks a waiver of inadmissibility in order to remain in the United States and adjust his status to permanent resident.

The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative (Form G-28), however the individual who submitted the Form G-28 is not an attorney or authorized representative as defined in 8 C.F.R. § 1.1(f) and as required by 8 C.F.R. §§ 103.2 and 292.1. All submissions will be considered but the decision will be furnished only to the applicant.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer in Charge*, dated February 21, 2006. The district director did not make a finding of whether the applicant established eligibility for a waiver under section 212(g) of the Act. *Id.*

On appeal, the applicant provided documentation to support that his wife and children will experience extreme hardship should he be prohibited from entering the United States. *Statement on Form I-290B*, dated March 7, 2006. The applicant does not address his inadmissibility under section 212(a)(1)(A)(iii)(I) of the Act.

The record contains a statement on Form I-290B; a psychological evaluation of the applicant's family members; a Form CDC 4,422-1 from the U.S. Department of Health and Human Services, Public Health Service; letters from the applicant's wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate, and; information regarding the applicant's unlawful presence in the United States. The applicant submitted documentation in a foreign language without English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. 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.

Section 212(a) states, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or 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

... is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) reads, in pertinent part:

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

8 U.S.C. § 1182(g). Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate CIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). “For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery.” *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [CIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

Upon review, the record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(a)(1)(B). The record of proceeding reflects that the U.S. Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition. *Form CDC 4,422-1, Part I, Executed by [REDACTED], Director, Division of Global Migration and Quarantine, National Center for Infectious Diseases* (June 16, 2005). The applicant then obtained the required statement from a PHS-approved facility, as per 8 C.F.R. § 212.7(b)(4)(ii). *Form CDC 4,422-1, Part II, Executed by [REDACTED]* (July 20, 2005). The applicant's wife properly completed Part III of Form CDC 4,422-1, attesting that necessary arrangements for further examination of the applicant will be made upon his entry to the United States. On July 28, 2005, a PHS reviewing official approved the applicant's Form CDC 4,422-1, thus certifying PHS's opinion that appropriate follow-up care will be provided upon the applicant's entry to the United States, and that PHS has no objection to his entry. The AAO finds that the applicant has established eligibility for a waiver of inadmissibility on the ground of a Class A medical condition, and that such a waiver is warranted.

However the record reflects that the applicant is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant entered the United States without inspection in or about June 1995 and voluntarily departed in or about March 2004. The applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect. Accordingly, the applicant accrued over six years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed

by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (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 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.

On appeal, the applicant provided documentation to support that his wife and children will experience extreme hardship should he be prohibited from entering the United States. *Statement on Form I-290B*, dated March 7, 2006. The applicant submitted a report from a psychologist, [REDACTED]. [REDACTED] states that she performed an evaluation of the applicant's family for the purpose of the present immigration proceeding. *Report from [REDACTED]*, dated March 7, 2006.

[REDACTED] stated that the applicant's wife is accustomed to life in the United States, and that she would face hardship should she join the applicant abroad, including the loss of educational opportunities, financial hardship, and lower health standards. *Id.* at 4. [REDACTED] indicated that the applicant's wife has no family in Mexico. *Id.* at 6. [REDACTED] stated that the applicant's wife would experience emotional hardship if she remains separated from the applicant, and that she is at risk of adjustment disorder and severe anxiety. *Id.*

[REDACTED] cited hardships to the applicant's children should they depart the United States, including the loss of educational opportunities, health care, and economic stability. *Id.* at 2. [REDACTED] indicated that, should the applicant's children remain in the United States, they would endure emotional hardship due to being separated from the applicant. *Id.* at 3.

The applicant's wife stated that she has endured hardship in the applicant's absence, including transportation problems and a lack of adequate income to hire childcare services. *Statement from the Applicant's Wife*, dated October 29, 2005. She explained that her son is residing with the applicant in Mexico, and that the applicant and her son were both ill. *Id.* at 1. She stated that the applicant was receiving vocational training in the United States, yet he is unable to continue due to his inadmissibility. *Id.* In a separate statement, the applicant's wife provided that she is unable to meet her economic needs without the applicant's assistance. *Prior Statement from the Applicant's Wife*, dated April 4, 2005.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if he is prohibited from entering the United States. The applicant presented evidence that his wife will experience hardship should he remain outside the United States. The applicant's wife suggested that she will endure emotional hardship if she is separated from the applicant or if she relocates to Mexico. Yet, the applicant has not distinguished his wife's emotional hardship from that which is commonly experienced by the spouses of those deemed inadmissible. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The report from [REDACTED] discusses the applicant's family's circumstances and background. Yet, the report was generated for the purpose of this proceeding, and it does not represent treatment for a mental health issue or an ongoing relationship with a mental health professional. The AAO gives due consideration to the opinions of [REDACTED], yet the report does not show that, should the present application be denied, the applicant's wife will experience hardship that is distinguishable from the common hardship experienced when a close family member is deemed inadmissible.

The applicant's wife indicated that she is experiencing financial hardship due to the applicant's absence. Yet, the applicant has not provided documentation to show his wife's income or expenses such that the AAO can determine whether she faces economic challenges. It is understood that the applicant's wife may require childcare assistance should she work full-time in the United States. Yet, the applicant has not explained whether his wife has friends or relatives who assist her with childcare such that she does not require hired help. The applicant's wife stated that her son was in Mexico with the applicant. The record is not clear regarding whether the applicant's wife would have sole responsibility for the care of their children, or whether their children would reside in Mexico with the applicant should the applicant's wife remain in the United States.

The applicant has not indicated whether he earns income in Mexico, or whether his wife would be able to secure employment there should she relocate to maintain family unity. The record does not contain an explanation of estimated income or expenses should the applicant's wife and children join the applicant in Mexico.

The applicant has not explained whether his wife speaks Spanish or has experience with the culture and customs of Mexico. Thus, the applicant has not established that his wife would face difficulty adjusting to Mexican culture.

The record contains references to hardships that the applicant's children may experience should they remain in the United States without the applicant or relocate to Mexico. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable to expect that the applicant's children's emotional state due to separation from the applicant or relocation will create emotional hardship for the applicant's wife. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not shown that his children will endure hardship that elevates the applicant's wife's challenges to extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she remain in the United States without him or relocate abroad to maintain family unity. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) 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.