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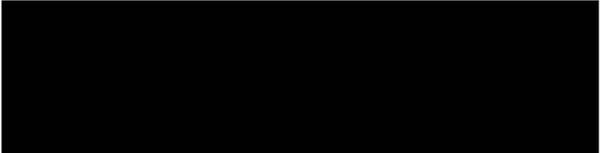


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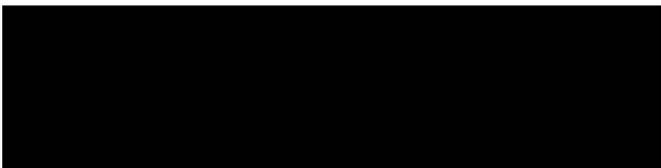


FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date:  
(CDJ 2005 584 986)

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:



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. Crissom  
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 naturalized United States citizen and has a United States citizen child. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their United States citizen 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. He also determined that the applicant was ineligible for a favorable exercise of the Secretary's discretion. The application was denied accordingly. *Decision of the Officer in Charge*, dated June 5, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to meet the burden of establishing extreme hardship to her qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office and attached statement*.

In support of these assertions, counsel submits a brief and a statement. The record also includes, but is not limited to, published country conditions reports; medical records for the applicant's spouse; published reports on health issues; statements from the applicant's spouse; and a medical letter for the applicant's spouse. 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 case, the record indicates that the applicant entered the United States without inspection in January 2001 and voluntarily departed the United States, returning to Mexico in June 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated July 7, 2005. The applicant, therefore, accrued unlawful presence from January 2001 until she departed the United States in June 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her June 2005 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 would experience as a result of her inadmissibility is not directly relevant to the determination as to 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 joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. The applicant's spouse suffers from depression and diabetes and must take insulin on a regular basis. *Medical records for the applicant's spouse*, dated February 4, 2006; *Statement from [REDACTED]*, dated August 8, 2006. While the AAO acknowledges the medical conditions of the applicant's spouse, it notes that he has received medical treatment in Mexico for complications of diabetes and depression. *Statement from [REDACTED]*, dated August 8, 2006. As such, the AAO does not find that the applicant's spouse would be unable to receive adequate medical treatment in Mexico. Counsel asserts that upon moving to Mexico, the applicant's son became very ill with a spectrum of illnesses, including infectious gastroenteritis, tonsillitis, skin allergies, bronchitis, and respiratory infections. *Attorney's statement*, dated January 12, 2006. She further notes that the child's physician recommended a change in location. *Id.* While the AAO acknowledges these assertions, it notes that the medical records submitted for the applicant's child are in the Spanish language and are not accompanied by the required certified translations. *See* 8 C.F.R. § 103.2(b)(3). Therefore, the AAO will not consider these documents and does not find counsel's assertions regarding the health of the applicant's child to be documented. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the applicant's child is not a qualifying relative for the purpose of this case. 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 is a native of Mexico. *Naturalization certificate*. The applicant's spouse has been suffering from diabetes mellitus and has been in a severe depressive state for the past ten years. *Statement from [REDACTED]*, dated August 8, 2006; *Medical record and physician's orders*, dated March 1999. His diabetes has been periodically out of control, and he has developed severe panic attacks. *Statement from [REDACTED]*, dated August 8, 2006. For the last year and a half, his physical health has been more difficult to control and his general condition has at times become critical, as he lives by himself without the assistance of his spouse. *Id.* The record includes documentation showing the applicant's spouse to have received emergency hospital services in 2006 for his diabetes. *Medical records for the applicant's spouse*, dated February 4, 2006. Counsel states that the applicant's spouse needs the assistance of the applicant to help treat his diabetes and associated complications. *Attorney's brief*, dated July 4, 2006. Counsel also notes that should the applicant's child reside in the United States, the applicant's spouse would have a difficult time caring for him, as the applicant's spouse struggles to care for his own health. *Id.* The applicant's spouse states that he has no contact with any extended family living in the United States. *Statement from the applicant's spouse*, dated June 27, 2005. He notes that he depends a great deal on the applicant as his helpmate and partner. *Id.* When looking at the aforementioned factors, particularly the physical health conditions as documented by licensed healthcare professionals and the lack of family support in the United States, the AAO finds

that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States without her.

However, 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.