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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 789 482 (relates)

IN RE: Applicant: [redacted]

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

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his United States citizen wife and son.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 14, 2006.

On appeal, the applicant, through counsel, asserts that the District Director erred in denying the applicant's waiver application, in that the applicant's United States citizen wife will suffer extreme hardship if the applicant is not granted a waiver. *See Form I-290B*, filed October 12, 2006.

The record includes, but is not limited to, counsel's appeal brief, letters from the applicant and his wife, letters of recommendations from the applicant's friends, a college transcript for the applicant's wife, and a letter and prescription note from [redacted] regarding the applicant's wife's psychological condition and the medications she has been prescribed. The entire record was reviewed and considered in arriving at 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-
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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 [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.

The AAO notes that the record contains several references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States in August 1998 without inspection. On March 5, 2003, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On September 7, 2004, the applicant's Form I-130 was approved. In November 2005, the applicant departed the United States. On November 22, 2005, the applicant filed a Form I-601. On September 14, 2006, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from August 1998, the date the applicant entered the United States without inspection, until November 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his November 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 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. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel states the applicant's "wife is and will experience extreme emotional hardship as a result of the separation from [the applicant]." *Appeal Brief*, page 3, filed November 9, 2006. In a letter dated October 4, 2006, the applicant's wife states she cannot imagine living without the applicant and her son. In a letter dated October 12, 2006, [redacted] states the applicant's wife is being treated for depression and is currently on medication. [redacted] states that the applicant's wife's "condition has worsened since the absence of [the applicant] and child." The AAO notes that since the applicant's wife's depression is primarily caused by the separation from the applicant, if the applicant's wife joins the applicant in Mexico then the depression would presumably no longer be an issue. Counsel states that the applicant's son is currently residing in Mexico with the applicant, because the applicant's wife cannot "raise her child alone, due to the need for her provide financially for her family." *Appeal Brief, supra* at 4. In a letter dated October 3, 3006, the applicant states his son resides in Mexico with him due to his wife's health and stress. Counsel states the applicant's son will suffer hardship by being "forced to attend school in Mexico." *Appeal Brief, supra* at 5. The AAO notes that the applicant's son may be experiencing some hardship in residing in Mexico; however, the applicant's son is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

Counsel states that the applicant's wife cannot relocate to Mexico because she would be unable "find comparable or adequate employment in Mexico to support [the applicant] and son." *Id.* at 6. The AAO notes that the applicant's wife is employed as a production associate and it has not been established that she has no transferable skills that would aid her in obtaining a job in Mexico. The applicant's wife states she would like to continue her college education but she cannot without the support of the applicant. The AAO notes that it has not been established that the applicant's wife cannot continue her education in Mexico. Additionally, the AAO notes that the applicant's wife speaks Spanish, spent part of her formative years in Mexico, and it has not been established that she has no family ties in Mexico.

The AAO finds that counsel has demonstrated extreme hardship to the applicant's wife if she remains in the United States without the applicant; however, it has not been established that the applicant's wife would suffer extreme hardship if she joined the applicant in Mexico. The AAO notes that the applicant failed to provide a statement or an affidavit from his wife regarding the extreme hardship she would suffer if she relocated to Mexico to be with him. Additionally, the AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she joins him in Mexico.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife has endured hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she were to join the applicant in Mexico.

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) 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.