

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

(CDJ 2004 757 264)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: OCT 01 2009

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:

[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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 under 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 and seeking readmission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their U.S. citizen child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated July 7, 2006.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship by being separated from the applicant. *Form I-290B and attached brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; medical prescriptions for the applicant's spouse; published articles about medication; school identifications for the applicant's child; report cards for the applicant's child; statements from family members and friends; tax returns; W-2 Forms and earnings statements for the applicant; and utility bills. 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 October 1988 and voluntarily departed in October 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 13, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her October 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. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. 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 travels with the applicant to 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 record does not address how the applicant's spouse would be affected if he resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties in Mexico. The record does not address whether the applicant's spouse speaks Spanish and how his language abilities, or lack thereof, would affect his adjustment to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. While the record documents that the applicant's spouse is taking medication for high blood pressure and depression (*See medical prescriptions for the applicant's spouse*), the record makes no mention of whether the applicant's spouse would require treatment in Mexico, and if so, whether he would be able to receive adequate care. When looking at the record before it, 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 states that he wants the applicant back with him, as she was his emotional support and without her, he does not think he can go on. *Statement from the applicant's spouse*, dated September 1, 2006. Counsel notes that the applicant's spouse has lost his mother, father and nephews in a short period of time. *Attorney's brief; Death certificate for the father of the applicant's spouse.* The AAO notes that the record does not establish when the mother and nephews of the applicant's spouse died. The applicant's spouse notes that he is struggling to financially support himself as well as his spouse and child in Mexico. *Statement from the applicant's spouse*, dated September 1, 2006. While the AAO acknowledges this statement, it observes that the record does not demonstrate that the applicant would be unable to contribute to her family's financial well-being from a place other than the United States. Further, while past-due utility bills are included in the record, the record does not provide evidence of remittances to the applicant or provide sufficient documentation to offer a clear picture of the applicant's spouse's financial status. The record documents that the applicant is taking medication for depression, high blood pressure, and pain. *Medical prescriptions for the applicant's spouse.* Family members and friends have observed a change in the applicant's spouse, noting how his health has deteriorated in recent times and how he is not as happy as he was before the applicant and their child's departure. *Statements from family members and friends*, dated August 28, 2006, undated, August 31, 2006, and August 27, 2006. While counsel asserts that the applicant's spouse's depression is so severe that he is unable to work, neither the prescription for amitriptyline, nor the statements of family members are sufficient to establish the nature or extent of the applicant's spouse's depression. 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 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.