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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date:  
(CDJ 1998 603 147)

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 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. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their children, one of whom is a United States citizen.

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 and that a favorable exercise of discretion was not warranted. The application was denied accordingly. *Decision of the Officer in Charge*, dated May 24, 2006.

On appeal, counsel contends that the applicant has demonstrated extreme hardship to her qualifying relative. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a psychological evaluation for the applicant's spouse; a medical statement for the applicant's spouse; medical prescriptions for the applicant's spouse; a psychological statement for the applicant's children; medical records and statements for the applicant's younger child; a health insurance coverage statement; a life insurance coverage statement; a health insurance card; statements from the applicant's spouse; an employment letter for the applicant's spouse; statements from friends; tax statements and W-2 Forms; a loan statement; bank statements; telephone and utility bills; and a loan payment. 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 May 1999 and returned to Mexico in December 2002. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated May 18, 2005. The applicant re-entered the United States in December 2002 with a V visa and voluntarily departed in May 2005. *Id.* The applicant, therefore, accrued unlawful presence from May 1999 until she departed the United States in December 2002. In applying for an immigrant visa, the applicant is seeking admission within ten years of her May 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 U.S. citizen child would experience upon removal 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 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 what additional family members the applicant's spouse may have in Mexico. The AAO observes that the applicant's eight-year-old U.S. citizen child has a history of medical conditions relating to his stomach, which required surgery in 2001, and to upper respiratory infections and reactive airway disease for which he was treated in 2002. *Medical records for the applicant's child; [REDACTED]*, dated September 8, 2001. The record also indicates that the applicant's children reside with her in Mexico and that her younger son has also been treated for bronchial infections while in Mexico. *Medical statement from [REDACTED]*, dated November 2, 2005. The applicant's spouse states that all medical expenses in Mexico have to be paid in cash. *Statement from the applicant's spouse*, dated December 13, 2005. The applicant's spouse notes that he pays for medical insurance in the United States that would cover these medical expenses. *Id.* He notes that he has to send a lot of money to Mexico to make sure his child receives the proper medical services. *Statement from the applicant's spouse*, undated. The applicant's spouse asserts that the medical services provided in Moroleon, Mexico are very expensive and inferior to those provided in the United States. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record fails to include published reports regarding the quality and accessibility of medical services in Mexico. The record also fails to demonstrate that medical services in Mexico must be paid in cash. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that the applicant's spouse has only worked in agriculture and that if he relocates to Mexico, the economic impact on him will be drastic and his ability to pay for his younger child's medical care will be jeopardized, if not completely compromised. *Attorney's brief*. While the AAO does not diminish the seriousness of the applicant's child's health condition, it notes that the applicant's younger child is not a qualifying relative for the purposes of this proceeding and the record fails to sufficiently document the effect of his condition on his father, the only qualifying relative, if the applicant's spouse moves to Mexico. The AAO also notes that the record fails to document that the applicant's spouse would be unable to obtain sufficient employment in Mexico to support his family and to pay for his son's medical care. 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*. Counsel states that the applicant's spouse has ten siblings who reside in the United States, all of whom are lawful permanent residents. *Attorney's brief*. The applicant's spouse has been diagnosed with Major Depressive Disorder, Single Episode and Anxiety Disorder. *Statement from [REDACTED]* dated June 9, 2006. He is being treated for anxiety and depression due to being separated from the applicant. *Statement from [REDACTED]*, dated June 12, 2006. He has been prescribed the medication Klonopin to treat severe anxiety.

*Medical prescriptions from [REDACTED]* As previously noted, the applicant's eight-year-old U.S. citizen child has a history of medical problems. *Medical records for the applicant's younger child; [REDACTED], dated September 8, 2001.* The applicant's children currently reside with the applicant in Mexico. *Statement from the applicant's spouse, undated; Statement from [REDACTED] dated November 2, 2005.* The younger child's doctor in Mexico has observed that he requires both parents' attention in order to achieve good physical and mental status. *Statement from [REDACTED], dated November 2, 2005.* The applicant's spouse states that he worries about his child a lot because of his health problems and that he is extremely affected by his family being away from him. *Statement from [REDACTED], dated June 9, 2006.* Statements from friends observe a significant change in the applicant's spouse, noting that he has become very sad and is in a bad mood due to being separated from his family. *Statements from friends, dated June 12, 2006.* When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to continue to reside in the United States.

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.