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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

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[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY, MEXICO
(CDJ 2004 746 567) (CIUDAD JUAREZ)

Date: JAN 07 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated November 21, 2006.

On appeal, counsel asserts that the applicant filed a waiver application without including all of the factors present in her case that establish her eligibility for a waiver. *Form I-290B*, dated December 19, 2006.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, statements from two of the applicant's spouse's children, the applicant's spouse's statement, the applicant's statement and country conditions information on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.¹

The record reflects that the applicant entered the United States without inspection in July 2000 and voluntarily departed the United States in July 2005. The applicant accrued unlawful presence during this entire period of time. The applicant is 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 and seeking readmission within ten years of her July 2005 departure.

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

¹ The record contains several Spanish language statements. They will not be considered as they do not include translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

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.

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 to the applicant will not be considered in this section 212(a)(9)(B)(v) waiver proceeding unless it causes hardship to her spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The record reflects that the applicant is currently in Mexico.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The record reflects that the applicant's spouse is currently 78 years old. *Applicant's Spouse's Certificate of Naturalization*, dated September 15, 1995. Counsel states that the applicant's spouse has resided in the United States since September 1955, his five children reside in the United States, all of his family resides in California except for one son, his social circle and everything in his life is in the United States, he is retired and is unfamiliar with the types of employment available outside of the United States for which he would be qualified, he maintains a close relationship with his children and relies on his family for moral support, he has very limited family ties in Mexico, he does not have the resources to move to a foreign country and start a life there, the political conditions in Mexico have taken on dangerous levels, the political conditions would cause the applicant's spouse extreme stress and anxiety, he would suffer from decreased health care and general material welfare, and his age and health would become an extreme hardship and burden. *Brief in Support of Appeal*, at 1-2, 4, 6-7, dated January 17, 2007. The record includes letters from two of the applicant's spouse's children. However, the record does not include documentary evidence that establishes the applicant's spouse has children. Going on record without supporting documentation will not meet the applicant's burden of proof in 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)). The applicant's spouse states that he has

difficulty hearing, he would not be able to find a job in Mexico at his age and with his medical problems, there is a high rate of unemployment in Mexico, he does not have the resources to start over in Mexico, all of his children would worry about him, he has no one to depend on or help in Mexico, he has no family in Mexico and his parents have passed away, and he loves his children very much and cannot imagine being apart from them and his grandchildren. *Applicant's Spouse's Statement*, at 1-2, dated January 17, 2007. The record includes information on country conditions in Mexico including an October 2006 U.S. Department of State Background Note on Mexico and the section on Mexico from the U.S. Department of State Country Reports on Human Rights Practices-2005. The applicant's spouse was evaluated by a psychologist who found him to have cognitive impairments, including poor memory, problems concentrating and to frequently make repetitive statements. *Psychological Evaluation*, at 4, dated December 28, 2006.

When the applicant's spouse's age, his 55 years of residence in the United States and the cognitive problems identified during his psychological evaluation are considered in combination with the normal disruptions and difficulties associated with relocation, the AAO finds that he would experience extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that it is extremely difficult for the applicant's spouse to keep traveling to Mexico to see the applicant, the stress of traveling is taking a toll on him especially as he is getting older, he has to face daily tasks on his own, he feels lonely and very sad, and he will suffer financial loss from maintaining two households. *Brief in Support of Appeal*, at 3-4, 7. The applicant's spouse was evaluated by a psychologist who states that the applicant's spouse is suffering from a number of symptoms and problems that meet the criteria for Adjustment Disorder of Adult Age, accompanied with moderate levels of depression and anxiety; the corroborative findings of the Beck Depression Inventory II and Beck Anxiety Inventory show that he is experiencing obsessive worries about the applicant and the future of his family; and the applicant's spouse has cognitive impairment, including problems with memory and concentration. *Psychological Evaluation*, at 6-7. The applicant's spouse states that he lives off of his retirement checks, which are not very big; he is having trouble providing for himself and the applicant in Mexico; he cannot find employment to supplement his income due to his age and hearing problems; he misses the applicant and constantly worries about her; he hopes that she is safe; and he gets depressed being apart from her. *Applicant's Spouse's Statement*, at 1-2. The record does not include supporting documentary evidence of financial hardship. However, based on the record, the AAO finds that, when considered in the aggregate, the hardships that the applicant's spouse would experience if he resided in the United States without his spouse rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying

circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors include the applicant's entry without inspection and her five years of unlawful presence in the United States.

The favorable factors include the presence of the applicant's U.S. citizen spouse, the lack of a criminal record, and extreme hardship to the applicant's spouse.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.