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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE:



Office: CIUDAD JUAREZ, MEXICO  
and [redacted] consolidated therein)

Date: **JAN 08 2010**

IN RE: Applicant:



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:



**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 (OIC), Ciudad Juarez, 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 her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she 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 her United States citizen husband and children.

The OIC 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 Officer in Charge*, dated February 12, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he record already establishes the extreme hardship which would be entailed by either separation for [the applicant's husband] from [the applicant] and his United States citizen children or his residence in Mexico." *Appeal Brief*, page 20, dated April 9, 2007.

The record includes, but is not limited to, counsel's appeal brief, letters from the applicant's husband, medical records and a psychological evaluation for the applicant's husband, school records for the applicant's children, and numerous documents pertaining to the applicant's immigration court proceedings. 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-
  - (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 references to the hardship that the applicant's children 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 her 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 husband is the only qualifying relative, and hardship to the applicant's children 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 May 1989 without inspection. On March 23, 1993, the applicant filed a Request for Asylum in the United States (Form I-589). On July 12, 1993, the applicant filed another Form I-589. On March 22, 1994, the applicant's Form I-589 was denied. On the same day, an Order to Show Cause (OSC) was issued against the applicant. On May 6, 1994, the applicant's other Form I-589 was denied. On the same day, an OSC was issued against the applicant. On July 28, 1994, an immigration judge granted the applicant voluntary departure to depart the United States by January 31, 1995. On December 20, 1994, an immigration judge granted the applicant voluntary departure to depart the United States by February 28, 1995.

On September 12, 1995, the applicant's lawful permanent resident husband filed a Form I-130 on behalf of the applicant. On October 25, 1995, a Warrant of Deportation (Form I-205) was issued. On October 28, 1995, the applicant's Form I-130 was approved. On June 25, 1996, an OSC was issued against the applicant. On September 9, 1996, another Form I-205 was issued. On October 16, 1996, the applicant filed an Application for Stay of Deportation (Form I-246), which was granted on the same day. On the same day, the applicant filed a motion to reopen her deportation proceedings. On November 14, 1996, the applicant's husband became a United States citizen. On January 3, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 9, 1997, an immigration judge denied the applicant's motion to reopen.

On April 8, 1997, the applicant filed an appeal with the Board of Immigration Appeals (Board). On May 19, 1997, an immigration judge terminated immigration proceedings against the applicant. On September 18, 1998, the applicant filed an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). On January 29, 2002, the Board dismissed the applicant's appeal. The applicant filed a motion to reopen the Board's decision, which the Board denied on May 6, 2003. On June 5, 2003, the applicant filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). The applicant filed a motion to reconsider the Board's decision, which the Board denied on September 25, 2003. On February 25, 2005, the Ninth Circuit denied the applicant's petition for review. On March 10, 2005, another Form I-205 was issued. On August 23, 2005, the applicant filed another Form I-212. In January 2006, the applicant departed the United States. On January 20, 2006, the applicant filed a Form I-601. On February 12, 2007, the OIC denied the Form

I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until January 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 2006 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 herself 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 claims that if the applicant's waiver is denied, her husband "will be given the choice of separation from his wife, or living in Mexico." *Appeal Brief, supra* at 20. The AAO notes that the applicant's husband is a native of Mexico, who speaks Spanish, and spent his formative years in Mexico. In an undated declaration, the applicant's husband states he "depend[s] on [the applicant] for emotional support." The applicant's husband further states that he is "suffering from anxiety." The AAO notes that medical documentation in the record establishes that the applicant's husband was prescribed Xanax for his anxiety; however, there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical condition in Mexico or that he has to remain in the United States to receive treatment. In a psychological evaluation dated June 2, 2005, [REDACTED] diagnosed the applicant's husband with major depression. In a follow-up psychological evaluation dated January 13, 2006, [REDACTED] states the applicant's husband "is very depressed and nervous.... He would become suicidal if [the applicant] were deported to Mexico." [REDACTED] further states "[the applicant's husband] would be traumatized by the forced separation from [the applicant] and would become very depressed. Stress such as separation from [the applicant] would cause deterioration of Major Depression." The AAO notes that since the applicant's husband's depression is primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Mexico then the depression would presumably no longer be an issue.

In a letter dated June 23, 2005, the applicant's husband states if the children move to Mexico, "they will miss their friends." Counsel states the applicant's children are living "in Mexico because [the applicant's husband] cannot work and take care of his children at the same time." *Appeal Brief, supra* at 20. [REDACTED] states the applicant's son has hyperactivity problems and "requires regular psychological treatment." The AAO notes that other than this statement from [REDACTED], there is no documentation in the record establishing that the applicant's son is currently suffering from any medical and/or psychological conditions. Additionally, if the applicant's son is suffering from hyperactivity problems, there is no evidence in the record establishing that the applicant's son cannot receive care for his problems in Mexico. The AAO notes that the applicant's husband is employed as a technician in the United States, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico and that there are no employment opportunities for him there. Additionally, it has not been established that the applicant's husband has no family ties in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

The AAO finds that counsel has demonstrated extreme hardship to the applicant's husband if he remains in the United States without the applicant; however, it has not been established that the applicant's husband would suffer extreme hardship if he joined the applicant in Mexico. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband'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 her husband if he joins her 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 husband has endured hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he 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 husband 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 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.