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

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FILE: [redacted] (CDJ 2004 731 539) relates)

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ)

Date:

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:

SELF-REPRESENTED

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 his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated March 5, 2007.

On appeal, the applicant's spouse contends that she and her daughter would suffer extreme hardship without the applicant. *Form I-290B, Notice of Appeals to the Administrative Appeals Office (AAO).*

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; psychological evaluations for the applicant's spouse and child; a statement from the Texas Health and Human Services Commission; a CareLink Contract; a medical bill for the applicant's spouse; medical documentation relating to the parents of the applicant's spouse; a tax return for the applicant and his spouse; and earnings statements for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes several documents in the Spanish language unaccompanied by certified translations. The AAO will not review these documents. *See* 8 C.F.R. § 103.2(b)(3).

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 July 1996 and voluntarily departed in July 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 4, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 12, 1998, when he filed an adjustment of status application based on a prior marriage to a U.S. citizen, and again from March 19, 2002, the day after his adjustment application was denied, until he departed the United States in July 2005. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (now Secretary of Homeland Security) as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al., U.S. Citizenship and Immigration Services* dated May 6, 2009. In applying for an immigrant visa, the applicant is seeking admission within ten years of his July 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 his child would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he 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 she resides in Mexico or the United States, as she 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 his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record does not address whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her 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. On the Form I-290B, the applicant's spouse notes that she suffers from asthma. *Form I-290B*. While the AAO acknowledges this statement, it notes that the record neither addresses nor documents, through country conditions reports, whether adequate healthcare is available in Mexico. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. She notes that she feels lonely and stressed because she finds it hard to have to deal with all of the responsibilities on her own. *Statement from the applicant's spouse*, undated. She worries about how she will provide for her daughter and it overwhelms her. *Id.* A psychological evaluation states that the applicant's spouse meets the criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic, and that, when tested, she had a Global Assessment of Functioning (GAF) score of 60. *Statement from* [redacted], dated March 14, 2007. The licensed healthcare professional recommends that the applicant's spouse attend counseling on a weekly basis to help her deal with her severe emotional distress. *Id.* Individual and family counseling services are also recommended for the applicant's daughter who has exhibited depression, anxiety, and impaired adjustment due to excessive worry over being separated from the applicant. *Additional statement from* [redacted] dated March 14, 2007.

The applicant's spouse, who has not previously worked outside the home, states that she has been unable to get a job because she has a difficult time concentrating and focusing due to all of the stress she is experiencing. *Statement from the applicant's spouse,* undated; *Form G-325A, Biographic Information, for the applicant's spouse.* She notes that she has lost her medical insurance due to the applicant being gone and, as a result, she has had to turn to government assistance. *Id.* The record includes verification that the applicant and his family were enrolled in CARELINK, a financial assistance program of the University Health System as of March 2005. *Carelink Contract,* dated March 3, 2005. It also establishes that the applicant's spouse has applied for and been found eligible for Medicaid benefits. *Verification of Benefits, Texas Health and Human Services Commission,*

dated March 15, 2007. While the applicant's spouse states that her parents have assisted her in paying the bills and buying basic necessities, she notes that this assistance will soon end as they have their own health problems. *Statement from the applicant's spouse*, undated. The applicant's spouse also states that her parents' health problems add to her depression. *Id.* Documentation in the record establishes that the mother of the applicant's spouse weighs well over 600 pounds, is essentially bed-bound and has multiple health problems related to her obesity, including congestive heart failure, hypothyroidism and hypertension. *Statement from* dated March 3, 2006. The record also indicates that the father of the applicant's spouse has needed medical testing for acute osteomyelitis, including a thoracic spine MRI, although the record fails to provide a final diagnosis of his health problem. *Medical records for the applicant's father*, dated February 5, 2007.

The AAO finds that when the aforementioned factors are considered in the aggregate and in combination with the normal hardships created by separation from a spouse, the record establishes that the applicant's spouse would suffer extreme hardship if she were to reside in the United States without him.

However, as the record has failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States if she relocates to Mexico, the applicant is not eligible for a waiver of his 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 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.