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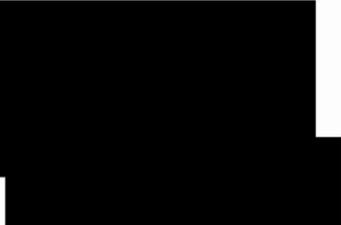


U.S. Citizenship  
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FILE:



(CDJ 2004 795 429)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

**JAN 26 2010**

IN RE:



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 and the father of a United States citizen child. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their children.

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 January 8, 2007.

On appeal, the applicant asserts that he and his family are suffering. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of these assertions, the record includes a brief; a statement from the Deputy Clerk, Denver County Court Criminal Division; a medical letter for the applicant's spouse; a statement from the immediate supervisor of the applicant's spouse; a statement from a City Representative for the City of El Paso; statements from the applicant's spouse and children; an employment termination letter from the applicant's spouse's employer in 2005; a car loan statement; a disability benefits statement for the applicant's spouse; and a disability notice of decision statement. 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 voluntarily departed in February 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated February 15, 2006. The applicant, therefore, accrued unlawful presence from May 1999 until he departed the United States in February 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 2006 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.<sup>1</sup>

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 are 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 United States citizen 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

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<sup>1</sup> The District Director also noted in his decision that the applicant was arrested for felony motor vehicle theft while residing unlawfully in the United States and that no court records or outcome of this arrest had been submitted. *Decision of the District Director*, dated January 8, 2007. The District Director further stated that, in his immigrant visa interview with a consular officer under oath, the applicant had denied ever being arrested. *Id.* The AAO notes that the record includes a document from the Deputy Clerk, Denver County Court Criminal Division that indicates that the applicant was charged with Aggravated Motor Vehicle Theft on October 11, 2000, that no charges were filed and that the case was closed. *Statement from Denver County Court Criminal Division*, dated January 11, 2007. The AAO will not analyze whether the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented a material fact at the time of his visa interview, as the extreme hardship analysis required for a waiver under section 212(i) of the Act is the same as that required under section 212(a)(9)(B)(v). An applicant who satisfies the requirements for a waiver under section 212(a)(9)(B)(v) of the Act also satisfies those under section 212(i).

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 joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The record, however, does not address the impact of relocation on the applicant's spouse. Accordingly, the AAO is unable to find that the applicant's spouse would experience extreme hardship if she joined the applicant in Mexico.

The applicant must also establish that his spouse will suffer extreme hardship if his waiver application is denied and she remains in the United States. The applicant's spouse was born in the United States. *Form I-130, Petition for Alien Relative*. The applicant's spouse states that as a desperate single mother of three, she has suffered from depression, stress, and problems with her three children.<sup>2</sup> *Statement from the applicant's spouse*, dated January 22, 2007. She notes that it is very hard to go through all of this alone, especially when she is used to having the applicant by her side. *Id.* The immediate supervisor of the applicant's spouse notes that the applicant's spouse has been struggling physically, financially, and emotionally. *Statement from* [REDACTED], dated January 2007. She has to work at least 75 hours a week to maintain her mortgage and car payments. *Id.* Most recently, she has not been able to work because of Carpal Tunnel syndrome. *Id.* She had surgery in December 2006 and she has been home since that time. *Id.* She is devastated and suffers from severe depression. *Id.* The record includes a brief statement from a Family Nurse Practitioner at the Thornton Medical Center who states that the applicant's spouse is under her care for the treatment of depression and has been on the antidepressant medication Lexapro since November 2006. *Statement from* [REDACTED], dated January 19, 2007. On January 18, 2007, the applicant's spouse returned for a follow-up appointment and reported an increase in depressive/anxiety symptoms since the denial of the applicant's immigration status. *Id.* As a result, the Family Nurse Practitioner placed the applicant's spouse on the medication Xanax to help her deal with her anxiety. *Id.* The Family Nurse Practitioner also confirms that the applicant's spouse is recovering from Carpal Tunnel syndrome surgery and is awaiting a return to work. *Id.* She indicates that the applicant's spouse was instructed to follow-up in two weeks. *Id.*

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<sup>2</sup> Although the applicant claims he has three children living in the United States, the AAO notes that the record documents only one of these children.

The record also includes a statement for the applicant's spouse noting she was paid disability benefits and that she was separated from her employment due to her health. *Final Admission of Liability*, dated December 22, 2005; *Notice of Decision, State of Colorado, Department of Labor and Employment*, dated November 14, 2005. On October 19, 2005, the applicant's spouse was terminated from her employment as a Certified Nursing Assistant, as her employer was unable to accommodate her physical limitations. *Statement from* [REDACTED], dated October 19, 2005. The applicant's spouse notes that she has a mortgage and loan to pay and lots of payments to make. *Statement from the applicant's spouse*, dated February 1, 2006. The record includes documentation of the applicant's spouse's car loan noting the amount of her monthly payments. *Diakonia Credit Union Note and Disclosure statement*.

After careful consideration of the submitted evidence, the AAO does not find it to offer sufficient proof that the applicant's spouse would suffer extreme hardship in the applicant's absence. While the AAO acknowledges the statement from the Family Nurse Practitioner, it does not find it sufficient to establish the state of the applicant's spouse's mental health. Although the statement indicates that the applicant's spouse is being treated for depression, it fails to provide any information concerning the basis on which this diagnosis was reached, the specific depressive/anxiety symptoms the applicant's spouse is reported to be suffering, the severity of these symptoms and the extent to which they affect her ability to function. Accordingly, the AAO finds the submitted statement to be of limited value to a finding of extreme hardship. The record contains no other documentation relating to the state of the applicant's spouse's mental health and how it would be affected by the applicant's absence.

The AAO also notes that, in 2005, the applicant's spouse was separated from her employment as the result of a disability. However, the record indicates that the applicant's spouse is again employed in the healthcare field, as evidenced by the statements from her supervisor and the Family Nurse Practitioner. There is no indication that the applicant's spouse's previous physical disability continues to be a factor in her life. The AAO also finds the record to establish that the applicant's spouse has undergone carpal tunnel surgery. Again, however, the record offers no information on the outcome of the surgery or its impact on the applicant's spouse's future employability or her ability to meet her daily responsibilities. The record also fails to provide any documentation, with the exception of an unsigned car loan statement, to establish the applicant's spouse's financial status in the absence of the applicant. As a result, the AAO does not find the record to establish that the applicant's spouse's health, mental or physical, or her finances, even when considered in the aggregate, provide a basis for a finding of extreme hardship.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative, the applicant is not eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) 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.