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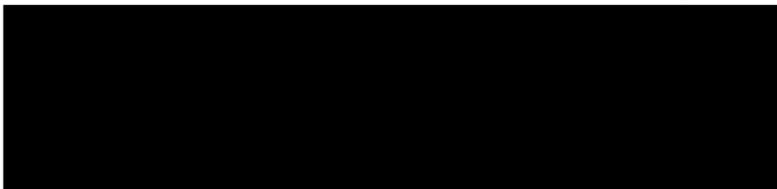
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE:

Office: MEXICO CITY (JUAREZ)

Date: FEB 21 2008

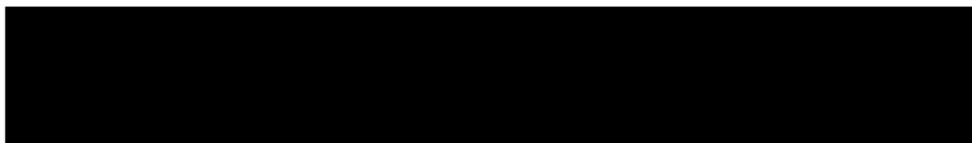
IN RE: Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found to be inadmissible to the United States under 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. He 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 be able to reside in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 5, 2006.

The following documents were submitted in support of the appeal: a letter from the applicant's spouse, a U.S. citizen, dated April 13, 2007; a copy of the Illinois Motorist Report relating to the applicant's spouse, dated September 2, 2006; information regarding the applicant's spouse's medical conditions and medications prescribed to her, dated February 27, 2007; a letter from the Victim Witness Assistance Program, Office of the State's Attorney, Cook County, Illinois, sent to the applicant's spouse regarding the homicide of her brother [REDACTED] dated June 29, 2006; evidence of the applicant's spouse's application for benefits under the Crime Victims Compensation Act, dated December 30, 2006; evidence of costs paid by the applicant's spouse for [REDACTED]'s funeral and burial; a copy of the applicant's spouse's U.S. birth certificate; a copy of [REDACTED]'s U.S. birth certificate; confirmation of the applicant's spouse's employment as a bilingual teacher, dated May 19, 2006; evidence of the applicant's and his family's health care coverage through the applicant's spouse's employment; a copy of the applicant's marriage certificate; and bills issued to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.<sup>1</sup>

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

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<sup>1</sup> The applicant's spouse sent a letter to the AAO, requesting that the instant appeal be "...withdrawn from your system..." *Letter from* [REDACTED] dated November 20, 2007. However, as the aforementioned request did not originate from either the applicant or counsel for the applicant, the AAO is unable to honor [REDACTED] request for withdrawal of the appeal.

[REDACTED]

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...

Regarding the applicant's ground of inadmissibility, the record reflects that the applicant admitted to a consular officer at the American Consulate General in Ciudad Juarez, Mexico that he had entered the United States without inspection in November 1998 and had subsequently departed in September 2005. The applicant accrued unlawful presence from November 1998 until his departure in September 2005. As the applicant resided unlawfully in the United States for more than one year and seeks admission within ten years after removal, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship the applicant or their child will face cannot be considered, except as it may affect the applicant's 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

The applicant's spouse asserts that she will suffer extreme emotional, psychological and physical hardship were the applicant unable to reside in the United States. As stated by the applicant's spouse,

I am currently being treated for anxiety. I have been treated with Lexapro, an anti-anxiety medication and anti depressive in result of this situation combined with the grief of my brother's [REDACTED] death is that I am currently depressed. I have been assigned a psychologist because of all the emotional problems that are going through my life right now. One being that my husband [the applicant] is away from me, the stress that results that my brother was killed. As the oldest and only daughter in my family I have to help with the court trial. This is a very devastating moment in my family's life. I have no or little support from my husband (alien) even if he wished to be by my side he cannot. I urge you to please take into consideration my sanity...I worry constantly and cannot sleep. All the responsibility lies within me, if my husband would be here that would be one less worry because he would be able to help with my daughter...As of now I am currently on close watch and am a pre-diabetic. I have to test my sugar level twice a day...

On September 2, 2006 of this year I also had a fatal car accident. My vehicle was totaled. The person who crashed against me had no insurance or license. I was the driver and was in the hospital for two days this also includes my daughter. I have major back problems and have to go to therapy at least twice a week...My uncle who was on the passenger side was declared legally blind; my mother suffered various bone fractures and was hospitalized for a month. My mother has little mobility on her left arm. She also goes to physical therapy twice a week. She does not drive therefore I am responsible on taking her to the hospital...

...after my brother's death it is of vital importance that my daughter is with her grandparents. She makes them smile and takes their mind off of all the dilemmas we have going on. My mom would be absolutely devastated if I take my daughter elsewhere. My brother, Angel is about to graduate college this June of 2007. It is of highly importance that I share that day with him for we have all looked forward to this. My other brother [REDACTED] has been devastated with my brother's death and is currently depressed...My brother's homicide has brought different levels of depression and anxiety...He was like my son. I am the oldest and the only female so I was like a second mom to him. That is the reason also why I have felt his departing so much. We need to stay together as a family and I need my husband to help me cope with this...

Sine my brother's homicide we have to attend the monthly court dates. When these court dates come it is a very stressful situation no words can describe the feeling of seeing several people that killed your loved one for no reason at all. These are just the preliminary hearings I need my husband by my side for when

the trial starts. There are four defendants in custody so the process will be a prolonged one...

Letter from [REDACTED] dated April 13, 2007.

The applicant's spouse further contends that she will suffer financial hardship were the applicant unable to reside in the United States. As stated by the applicant's spouse,

...At this time I have several loans which must be repaid. I have a mortgage on a home; I have a car loan, federal education loan, and credit cards that need to be paid off. Without my husband (alien) [the applicant] I am unable to pay these debts as we have done so in the past when we were together...As the only person who has graduated college in my house being that I have two younger siblings I was the one that paid for my deceased brother's funeral and burial expenses...

*Id.* at 2

Due to the applicant's spouse's documented medical and mental health situation and the financial hardship she is encountering due to the applicant's absence, the propensity for depression and deterioration and her need for her familial support network, especially after her car accident, her brother's homicide and the upcoming trials, it has been established that the applicant's spouse would experience extreme hardship if the applicant were unable to return to the United States to reside with the applicant's spouse. The applicant's spouse needs the emotional, psychological, financial and physical support that the applicant would provide; the applicant's continued absence would be extreme for the applicant's spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not made any statements that she would experience hardship were she to relocate to Mexico to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to accompany the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.