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U.S. Citizenship and Immigration Services
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**U.S. Citizenship
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Services**

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FILE:

(CDJ 2004 712 816)

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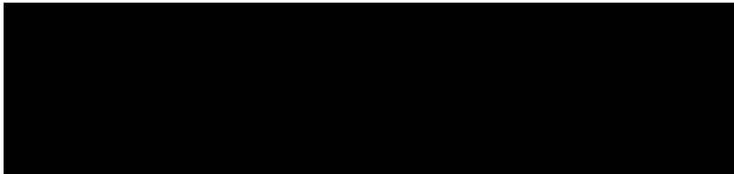
Date: APR 01 2006

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:



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).

John F. Grissom, Acting 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 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 naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and United States citizen children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated May 22, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that she failed to meet the burden of establishing extreme hardship to her qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B and attached statement from the applicant's spouse.*

In support of these assertions the record includes, but is not limited to, a medical letter for the applicant; statements from the applicant's spouse; a statement from one of the adult children of the applicant's spouse; a psychological evaluation of the applicant's spouse; medical records and a prescription for the applicant's spouse; receipts for money wired to the applicant; an employment letter for the applicant's spouse; a mortgage statement; a car insurance policy; a life insurance policy; and a statement from the applicant's church. 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 application, the record indicates that the applicant entered the United States without inspection in March 2002 or March 2003¹ and remained in the United States until July 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated July 6, 2005; *OF-194, Refusal Worksheet; Form I-601, Application for Waiver of Ground of Inadmissibility*. The applicant, therefore, accrued unlawful presence from March 2002 or March 2003 until she departed the United States in July 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 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 her children experience upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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

¹ The AAO notes that the Form DS-230, Application for Immigrant Visa and Alien Registration, the Form OF-194, Refusal Worksheet, and the Form I-130, Petition for Alien Relative, state that the applicant was unlawfully present in the United States as of March 2003 and the Form G-325A, Biographic Information sheet, states the applicant resided in Mexico until March 2003, while the Consular Notes and the Form I-601 application state that the applicant was unlawfully present as of March 2002. As the applicant remained in the United States until July 2005, she is inadmissible under section 212(a)(9)(B)(i)(II) regardless of whether she entered without inspection in March 2002 or March 2003.

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 he resides in Mexico or the United States, as he 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 her spouse will suffer extreme hardship. **The applicant's spouse is a native of Mexico. Naturalization certificate.** The record does not address whether the applicant's spouse has any family in Mexico. The applicant's spouse states that he has been living in the United States for 30 years and it would be very difficult for him to move to Mexico. *Statement from the applicant's spouse*, dated May 11, 2005. He states that he would not be able to find a job in Mexico that would enable him to provide for his family and that it would be difficult to adapt to Mexico. *Id.* According to a psychological evaluation, the applicant's spouse's livelihood is threatened if he were to leave the United States and reunite with his family in Mexico. *Consultation Evaluation from [REDACTED]* dated June 5, 2006. While the AAO acknowledges the statements of the applicant's spouse, as well as those reported in the psychological evaluation, the record does not document through published country conditions reports the economic situation and employment opportunities in Mexico. Going on record without supporting documentation is not sufficient to 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)). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The record does not address whether the applicant's spouse has any family members who reside in the United States. The applicant's spouse states that he is suffering what he considers to be extreme anxiety and depressive episodes due to the absence of the applicant. *Statement from the applicant's spouse*, dated June 19, 2006. One of the applicant's spouse's adult children notes that her father has been depressed because of the absence of the applicant. *Statement from the applicant's spouse's child*, dated May 18, 2006. She also notes that her father has lost a grandchild and that he hurts inside. *Id.* According to a psychological evaluation, the applicant's spouse reports symptoms consistent with depression and anxiety as documented by his responses in the Burns Depression and Anxiety Inventories. *Consultation Evaluation from [REDACTED]* dated June 5, 2006. He is moderately to severely depressed due to physical separation from the applicant and his stepson. *Id.* His symptomatology is directly associated with the separation from the applicant. *Id.* There is a significant decline in his psychological state. *Id.* He was encouraged to seek psychotherapy as well as medication due to his extreme psychological/emotional symptoms. *Id.* The applicant's spouse was also evaluated by a medical doctor who diagnosed him as having depression and subsequently prescribed the anti-depressant Prozac. *Dictation from [REDACTED]*, dated June 13, 2006; *Medical prescription for the applicant's spouse*, dated June 7, 2006. The applicant's spouse states that he is distraught

because it is nearly impossible for him to maintain two households, one in the United States and the other in Mexico. *Statement from the applicant's spouse*, dated June 19, 2006. The record shows that the applicant's spouse sends money to the applicant in Mexico. *Receipts for money wired to the applicant in Mexico*. The record also documents various expenses incurred by the applicant's spouse. *Mortgage statement; car insurance policy; and life insurance policy*. When looking at the aforementioned factors, particularly the mental health condition of the applicant's spouse as documented by two licensed healthcare professionals, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative if he relocates to Mexico, the applicant is not eligible for a waiver of her 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 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.