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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date: **APR 17 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, 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 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 and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit by fraud and/or willful misrepresentation. The applicant sought waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(i), in order to be able to return to the United States to reside with her spouse¹ and children, born in 1993 and 2000.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 7, 2006 (2006 Decision).²

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated July 11, 2006; a letter from the applicant's spouse, dated June 12, 2006; and financial documentation relating to the applicant and her family. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

¹ The record is unclear as to whether the applicant's spouse is a citizen or a lawful permanent resident of the United States. Irrespective of this issue, U.S. citizen or lawful permanent resident spouses are deemed to be qualifying relatives for purposes of waivers of inadmissibility and as such, the applicant's spouse's extreme hardship must be considered.

² The AAO notes that the applicant had previously filed a Form I-601 in January 2003, which was denied by the District Director, USCIS-Newark, New Jersey on November 26, 2003. *Decision of the District Director*, dated November 26, 2003 (2003 Decision). The applicant subsequently appealed the decision on December 8, 2003. The record does not establish that the appeal of the 2003 Decision has been adjudicated. As the 2006 Decision referenced above has been appealed and is being adjudicated by the AAO at this time, the 2003 appeal will be dismissed, the 2003 Decision is withdrawn and the application for a waiver of grounds of inadmissibility filed by the applicant in January 2003 will be declared moot.

(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...

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Regarding the applicant's grounds of inadmissibility, the record establishes that the applicant entered the United States without authorization in 1992 and did not depart until May 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in May 2005. The officer in charge correctly found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant's above-referenced

unlawful presence automatically renders her inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant is eligible to apply for a section 212(a)(9)(B)(v) waiver.³

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 U.S. 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 BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The applicant’s spouse contends that he will suffer emotional, financial and physical hardship if the applicant is unable to reside in the United States. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship they have and due to the emotional hardships his U.S. citizen children would experience based on their mother’s long-term physical absence. The applicant’s spouse would have to assume the role of primary caregiver and breadwinner to two young children, without the complete support of the applicant. Alternatively, were the children to remain abroad with the applicant, the applicant’s spouse would suffer extreme emotional hardship as he would be separated from his young children, who are very important to him, and he would suffer due to the decreased standard of living his children would experience while in Mexico. *Letter from* dated June 12, 2006.

³ As noted above, the officer in charge also determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act because the record establishes that the applicant failed to disclose a previous arrest and conviction for Shoplifting, in February 1993, on the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), submitted by the applicant in July 1999. As the applicant is clearly inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for unlawful presence, the AAO does not find it necessary to analyze whether the applicant’s failure to disclose her arrest and conviction for Shoplifting in 1993 on her Form I-485 makes the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation and/or whether said conviction makes her inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for a crime involving moral turpitude.

The applicant's spouse also contends that he would suffer extreme financial hardship; prior to his wife's relocation abroad, she assisted with the finances of the household. However, due to her physical absence, he is responsible for the mortgage, car payment, utility bills, insurance bills, and for sending money to Mexico to assist his wife. The applicant's spouse asserts that he is falling behind on payments and there is a strong likelihood he will lose their home and/or he will need to obtain government assistance. Finally, the applicant's spouse references that he is suffering physical hardship, as he suffers from diabetes and due to his wife's absence, he is no longer taking his medication and has stopped seeing his physician. *Id.* at 2-3.

The AAO concludes that the applicant's spouse would encounter extreme hardship were the applicant to reside abroad while he remains in the United States. Due to the demands placed upon the family by the children, the applicant's spouse would be required to assume the role of primary caregiver and breadwinner, while ensuring the continued financial viability of the household, without the complete emotional, physical and financial support of the applicant. In addition, the applicant's spouse would need to obtain a childcare provider who could provide the monitoring and supervision the children require while the applicant works outside the home, a costly proposition, both financial and emotional, for the applicant's spouse.

Alternatively, were the applicant's spouse to remain in the United States while the applicant resides abroad with the children, he would suffer extreme emotional hardship as he would be separated from his young children. He would also suffer hardship due to the substandard living his children would experience in Mexico. The AAO thus concludes that the applicant's spouse would suffer extreme hardship were the applicant to reside abroad while he remains in the United States. The applicant's spouse needs his wife's support on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's spouse has not claimed that he could not move to Mexico to live with his family. As such, it has not been established that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico, his birth country, to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. 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.