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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 29 2009
(CDJ 2004 835 431 relates)

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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.

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 record reflects that 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 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. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated November 14, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, ■■■, indicating they were married on January 25, 2003; an untranslated letter from Mr. ■■■ a letter from ■■■ physician; a copy of a bank receipt; a copy of ■■■s pay stub; a copy of a gas bill; a copy of a check written to "Key Development Group, LLC;" and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the record indicates, and the applicant does not contest, that she entered the United States in 1989 without inspection and remained until November 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure from the United States in November 2005. She now seeks admission within ten years of her 2005 departure. Accordingly, she is 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

In this case, counsel contends [REDACTED] "is presently receiving medical treatment for Barrett's esophagus, diffuse gastritis, status post Nissen funduplication with conversion to open Funduplication, and gastroesophagal reflux disease." *Letter from [REDACTED]*, dated November 29, 2006. A letter from [REDACTED]'s physician states that [REDACTED] has a "significant medical history" of these conditions and that "treatment consists of Zegerid 20/1100 (omeprazole/sodium bicarbonate) and life style modification such as diet." *Letter from [REDACTED]* undated. [REDACTED]'s physician states that [REDACTED] had been treated with multiple medications that did not improve his symptoms, but that he is presently being treated with "life style modification and Zegerid." *Id.* His physician also states that "[h]is abdominal pain localized in the epigastrium has been studied extensively with gastrin levels, PCR for *H. pylori*, ultrasound and CT of the abdomen." *Id.*

It is not evident from the record that the applicant has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

Significantly, there are no statements, affidavits, or letters in the record from the applicant. Likewise, although there is a letter from [REDACTED] in the record, the letter has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Accordingly, there are no statements from either the applicant or her husband addressing extreme hardship. The AAO notes that counsel's cover letter requested sixty days to submit a brief and additional evidence; however, to date, the AAO has not received a brief or any additional documentation.

To the extent [REDACTED] physician states that [REDACTED] has several health conditions, the physician's letter does not describe in plain language the prognosis or severity of [REDACTED] health problems. The letter does not indicate whether the conditions are temporary or permanent. In addition, there is no elaboration, explanation, or description regarding how these health conditions affect Mr. [REDACTED] daily life and there is no indication [REDACTED] requires any assistance for his conditions. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Finally, to the extent the record contains copies of bills and [REDACTED] pay stub, the AAO notes that the applicant has not made a financial hardship claim. In any event, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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)(v) 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.