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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, MEXICO Date JUN 11 2009
(CDJ 2004 744 365) (CIUDAD JUAREZ)

IN RE: [REDACTED]

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).

John F. Grisson
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 his last departure from the United States. The applicant is married to a naturalized United States citizen and has two U.S. citizen children. 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 her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated June 26, 2006.

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

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; a psychological evaluation of the applicant's spouse; medical records and prescriptions for the applicant's spouse; a statement from the applicant's spouse's church; a statement from the applicant's spouse's former school counselor; an employment letter for the applicant; and statements from the applicant's spouse's friends. 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 October 1996 and voluntarily departed the United States, returning to Mexico on July 25, 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated July 26, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States on July 25, 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his July 25, 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 his children experience upon removal is not directly relevant to the determination as to whether he 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 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 travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Form G-325A, Biographic Information sheet, for the applicant.* The applicant's spouse states that she could not function while being separated from the applicant, so she decided to join him in Mexico. *Statement from the applicant's spouse*, dated April 11, 2008. She notes that in Mexico, she became very sick and depressed. *Id.* While the record includes a psychological evaluation of the applicant's spouse, this evaluation addresses the psychological and physical conditions of the applicant's spouse as they relate to her separation from the applicant. *Statement from [REDACTED] Licensed Psychologist, Bilingual/Bicultural: English/Spanish*, undated. The record does not include any documentation from a licensed healthcare professional noting the physical or psychological conditions of the applicant's spouse in Mexico. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Additionally, the record fails to indicate whether the applicant's spouse has familial and cultural ties in Mexico. The record does not address the applicant's spouse's Spanish language ability and how that ability, or lack thereof, would affect her adjustment to Mexico. While the applicant's spouse notes that neither she nor the applicant have jobs in Mexico (*Statement from the applicant's spouse*, dated April 11, 2008), the record does not document, through published country conditions reports, the economic situation in Mexico and the cost of living. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Form G-325A, Biographic Information sheet, for the applicant.* The applicant's spouse states that being separated from the applicant has caused her world to fall apart. *Statement from the applicant's spouse*, dated July 20, 2006. She can no longer afford to go to school, and she had to ask a relative to live with her and her second daughter to help pay the rent. *Id.* A school counselor at Watsonville High School who has known the applicant's spouse since she was a high school student confirms that the applicant's spouse was enrolled in the nursing program at Long Beach City College, but that she had to leave school after being separated from the applicant because she was not emotionally ready to return. *Statement from [REDACTED] Migrant Counselor, Watsonville High School*, dated July 14, 2006. The applicant's spouse states that she worries she is becoming a very bad example for her children, as she cannot sleep at night, she has trouble eating, and she cries at the drop of a hat. *Statement from the applicant's spouse*, dated July 20, 2006. Psychological testing revealed that the applicant's spouse has severe mood disturbance in the form of depression and severe anxiety. *Statement from [REDACTED], Licensed Psychologist, Bilingual/Bicultural: English/Spanish*, undated. Based on the applicant's spouse's history, mental status examination, and psychological testing results, a licensed psychologist diagnosed her as meeting the clinical criteria for Major Depressive Disorder and Generalized Anxiety Disorder. *Id.* He further notes that her mental health is significantly compromised, and her psychological and emotional stability has deteriorated as a function of missing her child and the applicant. *Id.* The applicant's spouse was prescribed anti-depressant medications as a result of these conditions. *Medical records and prescription for the applicant's spouse*, dated July 11, 2006. Statements from friends also note that

the applicant's spouse's health has deteriorated since her separation from the applicant and their child, and that she has undergone significant weight loss. *Statement from* [REDACTED], dated July 18, 2006; *Statement from* [REDACTED] *Pastor*, dated July 17, 2006. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she 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 caused by the applicant's inadmissibility to the United States if she relocates to Mexico, the applicant is not eligible for a waiver of his 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 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.