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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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Services



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FILE: [REDACTED]  
(CDJ 2004 796 213)

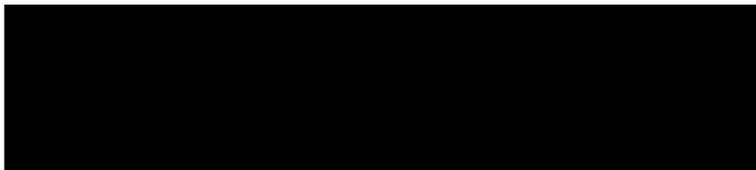
Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **MAR 17 2009**

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:



**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 their child.

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 22, 2006.

On appeal, the applicant contends her spouse is under treatment for various medical problems and is experiencing a severe depression as a result of their separation. *Form I-290B*.

In support of the applicant's claim to extreme hardship, the record includes, but is not limited to, a psychological evaluation of the applicant's spouse; bank statements; tax statements; unemployment compensation payments for the applicant's spouse; W-2 Forms for the applicant's spouse; medical records for the applicant's child; medical records for the father of the applicant's spouse; an employment letter for the applicant's spouse; medical prescriptions for the applicant's spouse; medical records for the applicant; property deeds; a car insurance policy and car titles; earnings statements for the applicant's spouse; a land lease; achievement certificates for the applicant's spouse; and letters from friends and relatives. 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 2003 and voluntarily departed the United States in September 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 12, 2005. The applicant, therefore, accrued unlawful presence from March 2003 until she departed the United States in September 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her September 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 child 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 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 was born in Mexico. *Birth certificate*. Although the record does not specifically indicate how long the applicant's spouse has resided in the United States, the AAO notes that the record includes his federal income tax return for 1981. *1981 Income Tax Return for the Applicant's Spouse*. As reported in the psychological evaluation of the applicant's spouse, he has lived and worked in the United States the vast majority of his life. *Statement from [REDACTED], Licensed Clinical Psychologist, undated; See also Form I-290B*. His immediate family has all left Mexico to reside in the United States. *Id.* He does not have close relatives in Mexico. *Id.*; *See also U.S. birth certificates and lawful permanent residency cards for relatives of the applicant's spouse*. The applicant's spouse states that he would be a foreigner in Mexico and would not know how to restart his life there. *Form I-290B*. He asserts that he suffered extreme hardship when he lived in Mexico. *Id.*

Apart from demonstrating the applicant's familial ties in the United States, the record does not establish how the applicant's spouse would be affected if he resided in Mexico. The record does not address what employment opportunities the applicant's spouse would have in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. While the record includes a psychological evaluation from a licensed clinical psychologist that finds the applicant's spouse to be suffering from Major Depressive Disorder and a Generalized Anxiety Disorder, the evaluation addresses these conditions only as they relate to his separation from the applicant. *Statement from [REDACTED], Licensed Clinical Psychologist, undated*. The evaluation does not indicate how the applicant would be affected on a psychological level if he resided in Mexico. The AAO notes that the record includes medical documentation for the applicant's child showing he has been treated for respiratory infections. *ASCII Text Patient Chart, dated April 24, 2005*. Although the applicant's child is not a qualifying relative for purposes of this case, the AAO will analyze hardship to the applicant's child as it affects the applicant's spouse, the only qualifying relative in this case. The record, however, does not address how any hardship experienced by the applicant's child would affect the applicant's spouse. 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 applicant's spouse is a native of Mexico and naturalized in the United States on June 19, 1987. *Naturalization certificate*. As previously noted, his immediate family has all left Mexico to reside in the United States. *Statement from [REDACTED], Licensed Clinical Psychologist, undated; See also U.S. birth certificates and lawful permanent residency cards for relatives of the applicant's spouse*. The applicant's spouse has significant symptoms of depression and anxiety, and is being treated for these conditions with medication. *Statement from [REDACTED], Licensed Clinical Psychologist, undated; See also Medical prescription for the applicant's spouse, filled July 12, 2006*. A review of his present symptomatology, including insomnia, panic attacks, agitation and rash, indicates that he is unable to cope and manage without his family. *Statement from [REDACTED], Licensed Clinical Psychologist, undated*. His mental and physical health are deteriorating, and he is at risk of developing a deepened depression that may end in his hospitalization. *Id.* The applicant's spouse

has been diagnosed with Major Depressive Disorder and a Generalized Anxiety Disorder, based on his psychosocial history, a mental status examination, his present psychological status, and a battery of psychological tests. *Statement from [REDACTED], Licensed Clinical Psychologist, undated.* Considering the situation of the applicant's spouse in light of the aforementioned Cervantes-Gonzalez factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he resides in the United States without her.

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 inadmissibility under section 212(a)(9)(B)(v) 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.