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



U.S. Citizenship  
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FILE:

[REDACTED]  
(CDJ 2004 607 075)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: MAY 07 2009

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 his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their 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 his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated March 27, 2006.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relatives. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a medical letter, record, and prescription for the applicant's spouse; a statement from the father of the applicant's spouse; an employment letter for the applicant's spouse; statements from friends; a country conditions report on Mexico; a statement from a lending company; earnings statements for the applicant's spouse; a deed of trust; a loan statement; a gift letter; credit card statements; a utility bill; a cable bill; an energy bill; a car payment; telephone bills; an electricity bill; and a car insurance quote. The entire record was reviewed and considered in rendering a decision on the appeal.<sup>1</sup>

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

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<sup>1</sup> The AAO has not considered any documentation submitted in the Spanish language as it does not comply with regulatory requirements. 8 C.F.R. 103.2(b)(2) and 8 C.F.R. 103.2(b)(3).

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 June 1996 and departed the United States voluntarily, returning to Mexico on April 7, 2005. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated April 29, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the enactment of unlawful presence provisions under the Act, until he departed the United States on April 7, 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of his April 7, 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 would 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 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 joins the applicant in Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant was born in the United States. *Birth certificate*. She has no cultural or familial ties to Mexico. *Attorney's brief; Statement from the applicant's father-in-law*, undated. The applicant's father and siblings still live in Arlington, Texas and the applicant's spouse does not wish to be separated from them. *Statement from the applicant's spouse*, dated March 30, 2006. The applicant's spouse is pregnant and receiving medical treatment in the United States. *Statement from [REDACTED], Obstetrical & Gynecological Associates, Medical Clinic of North Texas, P.A.*, dated March 29, 2006; *Medical records for the applicant's spouse*. According to counsel, the applicant has been unable to find work for many reasons. *Attorney's brief*. He has not lived in Mexico for a long period of time, and no longer has contacts to find employment in a place where employment is difficult for anyone to find. *Id.* The applicant's two United States citizen children currently live with the applicant in Mexico, as there is no way that the applicant's spouse is able to provide childcare for them as she works twelve hour days. *Statement from the applicant's spouse*, dated March 30, 2006. Therefore, the applicant must seek employment with salary and hours that will allow him to find childcare for his two young children. *Attorney's brief*. Counsel also states that as the applicant's spouse will soon deliver their third child, she will be unable to work for a period of time. *Id.* A country conditions report submitted for the record documents that the daily minimum wage in Mexico is a little over \$4.00 an hour. *Mexico, Country Reports on Human Rights Practices – 2005, United States Department of State*, dated March 8, 2006. The record, however, does not establish that the applicant can only obtain employment at the minimum wage. Accordingly, it fails to demonstrate that he would be unable to adequately support his family in Mexico. The AAO notes counsel's assertion that extreme hardship to the applicant's children was not examined. *Form I-290B, Notice of Appeal*. The applicant's children are not, however, qualifying relatives for the purposes of this case and the record fails to document how any hardship the applicant's children may encounter would affect their mother, the only qualifying relative. When looking at the aforementioned factors, 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. The applicant's spouse was born in the United States and has many family members in the United States. *Birth certificate; Statement from the applicant's spouse*, dated March 30, 2006. As previously noted, the applicant's spouse is pregnant. *Statement from [REDACTED], Obstetrical & Gynecological Associates, Medical Clinic of North Texas, P.A.*, dated March 29, 2006. She states that she has lost her will to live and that the applicant is everything to her. *Statement from the applicant's spouse*, dated March 30, 2006. She notes that she is fifteen weeks pregnant and that her unborn baby is not at fault for her loss of appetite, crying spells or even the constant sadness she feels. *Id.* When she is alone, she feels depressed, which makes it hard for her to get up in the morning. *Id.* She knows that she is alive, but she feels like she is dead. *Id.* A physician caring for the applicant's spouse states that the applicant's spouse is under an extreme

amount of stress and very anxious over being separated from her children and that it will be beneficial to the applicant's spouse and her pregnancy to have her family in the United States. *Statement from [REDACTED], Obstetrical & Gynecological Associates, Medical Clinic of North Texas, P.A.*, dated March 29, 2006. The applicant's spouse has been prescribed the anti-depressant medication Zoloft. *Prescription, [REDACTED] M.D.*, dated March 31, 2006. The AAO notes that the record includes a letter from a company that states it can no longer loan money to the applicant and his spouse. *Statement from [REDACTED]*, undated. The record also includes bill statements for the applicant's spouse. *See various bill statements.* The AAO observes that letters from the applicant's spouse's family and co-workers describe the marked changes in her personality as a result of her situation. *Statements from family and co-workers.* 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 does not also establish that the applicant's spouse would suffer extreme hardship upon relocation, the applicant is statutorily ineligible for relief under section 212(a)(9)(B)(v) of the Act. Accordingly, 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.