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U.S. Citizenship
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Services

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FILE:

[REDACTED]
(CDJ 2003 747 195)

Office: CIUDAD JUAREZ, MEXICO Date:

MAR 05 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:

[REDACTED]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 4, dated March 22, 2006.

On appeal, counsel asserts that the officer-in-charge erred in denying the application and that he abused his discretion. *Form I-290B*, dated April 18, 2006; *Brief in Support of Appeal*, at 7, received May 22, 2006.

The record includes, but is not limited to, counsel's brief, counsel's supplemental brief, the applicant's spouse's statements, photographs of the applicant's family, letters of support, the applicant's spouse's medical records, physician's letters for the applicant's spouse, and a letter from an elementary school principal in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in July 2000 and departed the United States in July 2003. The applicant accrued unlawful presence from July 2000, the date he entered the United States, until July 2003, the date he departed the United States. The applicant 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 and seeking readmission within ten years of his July 2003 departure.

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.

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. Hardship to the applicant or his child will not be considered in this section 212(a)(9)(B)(v) waiver proceeding unless it causes hardship to his spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Mexico or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. Counsel states that the applicant's spouse's entire family is in the United States, she cannot enroll her daughter in school in Mexico due to her daughter's U.S. citizenship, and her whole life and future is in the United States. *Brief in Support of Appeal*, at 5. Counsel states that the applicant's daughter's hardship weighs greatly on the applicant's spouse. *Id.* at 6. The record includes a letter written by an elementary school official who states that the applicant's daughter was not accepted for admission due to her citizenship and she must remain in the United States to receive schooling. *Letter from Principal*, [REDACTED] dated October 29, 2005. The AAO does not find this to be sufficient evidence of the inability of the applicant's daughter to attend school in Mexico. The record does not include other evidence of hardship to the applicant's daughter that would affect the applicant's spouse.

Counsel states that the applicant's spouse needs continuous medical care in the United States and she has not been receiving appropriate medication monitoring or health care support in Mexico. *Supplemental Brief in Support of Appeal*, at 3, received August 29, 2006. The applicant's spouse's physician states that the applicant's spouse has been his patient since August 19, 2005. *First Letter from [REDACTED] D.*, dated November 1, 2005. The applicant's spouse's physician states that the applicant's spouse has been diagnosed with hypothyroidism, dyslipidemia and elevated liver enzymes; her conditions have been difficult to control; the hypothyroidism worsened

upon a recent visit to Mexico due to taking the wrong medication; she needs extra care/help with her numerous pathologies; and she has not complied with her treatment due to her poor understanding of her conditions. *Second Letter from* [REDACTED], dated May 25, 2006. Based on the serious nature of the medical conditions affecting the applicant's spouse and her lack of understanding regarding them, the AAO finds that relocation to Mexico, which would require the applicant's spouse to leave the care of the physician who has been treating her since August 19, 2005, to constitute extreme hardship.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that this is the first and only marriage for the applicant and his spouse, they were raising a family for several years before his departure, the applicant is the sole wage earner due to his spouse's hyperthyroidism, the applicant's spouse is unable to maintain an independent residence, she is chronically-fatigued from her medical condition, working at a full-time job is difficult in light of her limitations, she is traveling back and forth to Mexico to build a bond between her daughter and the applicant, she is being financially supported by her father and brother, and she is faced with mounting medical expenses. *Brief in Support of Appeal*, at 4-5. The record reflects that the applicant's spouse has been diagnosed with hypothyroidism, dyslipidemia and elevated liver enzymes; she is currently on medication for the thyroid disorder; and she will need periodic follow-up. *First Letter from* [REDACTED] The applicant's spouse's physician states that she needs extra help due to having numerous pathologies, that she has financial difficulties that make it difficult for her to receive optimal care, and that her medical conditions would likely worsen due to psychological and physiological stress if the applicant were removed to Mexico. *Second Letter from* [REDACTED]

The applicant's spouse states that she should see a doctor regularly for her medical problem, but she is financially unable to do so. *Applicant's Spouse's Statement*, at 2, dated April 17, 2006. The applicant's spouse states that the applicant could take care of their daughter when her fatigue is too much for her. *Id.* She also asserts that she and her daughter are suffering emotionally and economically, she travels to Mexico every month, and does not have a permanent place to live. *Applicant's Spouse's Second Statement*, undated. The applicant's spouse's brother-in-law states that the applicant's spouse is very sad, that she is not doing well, and that her daughter has to have check-ups and vaccinations. *Statement of* [REDACTED] undated.

Based on the record, the AAO finds that, when considered in the aggregate, the hardships that the applicant's spouse would experience if she resided in the United States without her spouse rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying

circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors include the applicant's entry without inspection, unlawful presence and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse and daughter, the lack of a criminal record, extreme hardship to the applicant's spouse and an approved Form I-130.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.