

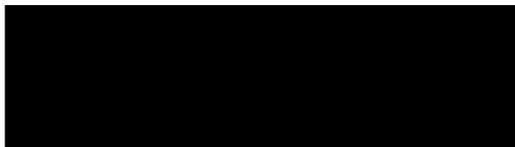
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H6

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: AUG 02 2010
(CIUDAD JUAREZ)

IN RE: Applicant: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico and 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 under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of her last departure. The applicant is the spouse of a U.S. citizen and the mother of two U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated October 7, 2008.

On appeal, the applicant's spouse contends that the Acting District Director failed to consider the emotional hardship he is suffering as a result of his separation from the applicant. He further asserts that he is experiencing financial hardship as a result of the applicant's inadmissibility. *Form I-290B, Notice of Appeal or Motion; Applicant's spouse's statement*, dated November 3, 2008.

In support of the waiver, the record includes, but is not limited to, statements from the applicant's spouse; a psychological evaluation of the applicant's spouse; medical documentation relating to the applicant's mother and older son; an employment letter for the applicant's spouse; documentation of the applicant's conviction for retail theft; country conditions materials; telephone billing statements; bank statements; and a home loan notice. The entire record was reviewed and considered in reaching a decision in this matter.

Section 212(a)(9)(B) states 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.

The record indicates that the applicant entered the United States without inspection in March 2000 and remained in the United States until September 2007, when she departed voluntarily for Mexico. Accordingly, the applicant accrued unlawful presence from the date she unlawfully entered the United States until she returned to Mexico in 2007. As she accrued unlawful presence in excess of one year and is seeking immigrant admission within ten years of her 2007 departure from the United States, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.¹

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 would result in extreme hardship for the citizen or lawfully resident spouse or parent of the applicant.² The plain language of the statute indicates that hardship that the applicant or other family members would experience if her waiver request is denied is not directly relevant to a determination of her eligibility for a section 212(a)(9)(B)(v) waiver. The only relevant hardship in the present case is the hardship that would be suffered by the applicant's spouse if the applicant's waiver application is denied. Hardship experienced by nonqualifying relatives will be considered to the extent that it affects the applicant's spouse. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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

¹ The record establishes that the applicant was convicted of retail theft under section 490.5(a) of the California Penal Code in 2006. The AAO will not, however, consider whether the applicant has been convicted of a crime involving moral turpitude (CIMT). Even if a CIMT, the applicant's crime is subject to the petty offense exception found in section 212(a)(2)(ii)(II) of the Act, i.e., the maximum penalty for the crime committed was punishable by no more than one year of imprisonment and the applicant was sentenced to less than six months in prison.

² The record contains an August 21, 2007 medical statement from the physician treating the applicant's mother that indicates she is suffering from end-stage renal disease and is dependent on the applicant for her care. However, the applicant did not include her on the waiver application. Furthermore, the record does not establish that the applicant's mother is a U.S. citizen or lawful permanent resident of the United States and, therefore, a qualifying relative for the purposes of this proceeding. Accordingly, the hardship she would experience as a result of the applicant's inadmissibility will not be considered.

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 the adjudication of this case.

The applicant needs to establish that if the applicant's spouse joins her in Mexico, he will suffer extreme hardship. In a September 2007 statement, the applicant's spouse asserts that it would be impossible for him to adapt to a new way of life in Mexico. He states that working conditions in Mexico are not favorable and that his age would work against him. He further notes the low wages, high poverty levels, high crime rate and police corruption in Mexico and states that he would not be able to earn a living and support his family. In support of his claims, the applicant's spouse submits a *Wikipedia* article on crime and violence in Mexico, and a translation of a *Latinamerican jobs.com* article concerning the impact of age on unemployment in Mexico.

The record also contains an October 29, 2008 psychological evaluation of the applicant's spouse prepared by licensed psychologist [REDACTED]. [REDACTED] states that the applicant's spouse would lose everything if he moved to Mexico, a country where he has never lived and in which he would not know how to survive. [REDACTED] asserts that the applicant's spouse has an 11th grade education and no marketable skills and, therefore, his chances for success in Mexico are very low. [REDACTED] further states that it would be very difficult for the applicant's spouse to leave his parents and siblings as he is extremely close to them. She also asserts that the applicant's spouse would lose his truck if he relocated to Mexico and would be unable to get much money for it at this time. She further notes that the applicant's spouse's relocation to Mexico would result in lost opportunities for his children as they would be living in a very small town where they would have no chance for a successful life.

Although the AAO acknowledges that the applicant's spouse was born in the United States and has not previously resided in Mexico, it does not find the record to contain sufficient evidence to establish that relocation to Mexico would result in extreme hardship for him. The record does not indicate that the applicant's spouse is unable to speak or to read and write in Spanish. Neither does it demonstrate that the applicant and her spouse would be unable to obtain employment in Mexico and support their family. Although [REDACTED] reports that the applicant's spouse has only an 11th grade education and no marketable skills, the record contains an employment letter that indicates the applicant's spouse has been working as a contractor for [REDACTED] for six years. Although the letter does not indicate the nature of the applicant's spouse's work, the psychological evaluation of the applicant's spouse reports that he has been working as a truck driver for eight years.

The submitted article on age discrimination in Mexico indicates that individuals who are 40 years of age and without job experience have difficulty obtaining employment, as they are competing against young people for entry level jobs. It also indicates that for technical, professional or other positions requiring experience, age may not be a determining factor but that no statistics exist to establish how experience affects hiring practices. While the AAO acknowledges that older workers may experience discrimination in seeking employment in Mexico, it does not find the submitted article to establish that the applicant's spouse would be precluded from finding a job if he relocates to Mexico. The record does not establish that the job experience or skills gained by the applicant's spouse as a truck driver in the United States would not transfer to Mexico. Neither does it support the claim that the applicant's spouse would lose his truck as a result of relocating to Mexico.

The AAO acknowledges the applicant's concerns about crime and violence in Mexico. The *Wikipedia* article on crime and violence in Mexico reports that the country is experiencing increasingly high crime rates, especially in major urban centers. The AAO notes that the Department of State, on March 14, 2010, issued a travel warning to U.S. citizens considering travel in the area of the United States-Mexico border. The applicant was born [REDACTED] along Mexico's southern border, and the record includes no evidence to indicate that she, her spouse or their family members are now living in an area of Mexico covered by the Department of State travel warning. Accordingly, the record does not demonstrate that the applicant's spouse would be at risk from the violence that has permeated life along the border between the United States and Mexico.

With regard to the hardship that [REDACTED] indicates would be experienced by the applicant's children, the record offers no evidence that supports the claim that the applicant and her family would live in a small town where no opportunities would exist for the children. Beyond the applicant's birth certificate, which indicates that she was born in the municipality of Xalisco in the State of Nayarit, the record offers no evidence that establishes where the applicant's family would live in Mexico. The AAO further notes that, as previously discussed, children are not qualifying relatives in a section 212(a)(9)(B)(v) proceeding and the record fails to document how any hardship they might experience in Mexico would affect their father, the only qualifying relative.

Based on the record before it, the AAO does not find the applicant to have established that her spouse would experience extreme hardship if he joined her in Mexico.

The applicant must also establish that her spouse would experience extreme hardship if he remained in the United States without her. On appeal, the applicant's spouse states that he is experiencing depression, extreme anxiety, insomnia, mood swings and tremendous pressure in the applicant's absence. He asserts that he is unable to concentrate at work and does not want to imagine how these feelings would worsen if the applicant's waiver request is not approved. The applicant's spouse also contends that he is not able to function properly in life and that the denial of the applicant's Form I-601 will destroy his marriage. Additionally, the applicant's spouse states that he is experiencing economic hardship as a result of having to maintain two households and that, as a result of the current economic downturn in the United States, he is facing the loss of his home.

In her evaluation of the applicant's spouse, [REDACTED] finds him to meet the criteria for a Major Depressive Disorder, Single Episode, Moderate (296.22 of the DSM-IV) and an Anxiety Disorder, NOS (300.0 of the DSM-IV). [REDACTED] indicates that she interviewed the applicant's spouse on September 28, October 6, and October 18, 2008, and administered a series of standard psychological tests to reach her conclusions. She also states that she referred the applicant's spouse for supportive psychotherapy as his emotional condition is very fragile and unstable, and his coping skills very poor. [REDACTED] finds the applicant's spouse's emotional state to be the result of the separation of his family, which has been devastating for him and has created a significant number of problems. Adding to the applicant's spouse's stress and tension, [REDACTED] asserts, is the potential loss of his home. She states that because of the many expenses resulting from the applicant's immigration situation, the applicant's spouse has no money to pay his mortgage. [REDACTED] further states that the time the applicant's spouse has had to spend away from work to pursue the applicant's immigration case has meant that he has not earned enough income to meet his financial responsibilities. She concludes that the applicant's spouse will not be able to tolerate his separation from the applicant for much longer and should their separation continue, his current mental state would develop into Major Depressive Disorder, Recurrent, Severe, without Psychotic Features.

The record contains an October 20, 2008 notice sent to the applicant's spouse regarding his mortgage and possible ways to save his home. However, while this notice indicates that the applicant's spouse is having trouble paying his mortgage, the record offers no actual documentation of the amount of his monthly mortgage payment or the status of his payments. The record also includes bank statements and telephone billing statements that, the applicant's spouse states, are proof of the economic strain he is under. This evidence, however, does not prove that the applicant's is experiencing financial hardship as a result of supporting two households. While the AAO notes the withdrawals through non-Bank of America ATMs that have been highlighted by the applicant's spouse, the submitted bank statements do not establish the purpose of the withdrawals or that they were made by the applicant in Mexico. Moreover, as previously discussed, the record does not establish that the applicant is unable to obtain employment in Mexico and, thereby, reduce or eliminate any financial burden on her spouse. The record also contains no evidence, e.g., earnings statements, W-2 forms or tax returns, establishing the income of the applicant's spouse. Without evidence of the applicant's spouse's income, the AAO is unable to reach any conclusions regarding his financial situation.

The AAO, however, takes note of [REDACTED] mental health assessment of the applicant's spouse, which is supported by the results of standardized psychological testing. [REDACTED] finds the applicant to be exhibiting high levels of depression and anxiety, which have greatly affected his ability to cope with the world around him, and to hold negative expectations regarding his future. The combination of high levels of depression and anxiety, and negative expectations, [REDACTED] contends, is a clear danger signal in terms of the applicant's spouse's mental health. When the applicant's spouse's debilitating mental/emotional state and the normal disruptions and difficulties created by separation from a family member are considered in the aggregate, the AAO finds that the applicant has established that her spouse would suffer extreme hardship if her waiver application is denied and he remains in the United States.

However, as the record does not establish that the applicant's spouse would also experience extreme hardship if he relocated to Mexico, she has not demonstrated eligibility for a waiver 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)(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.