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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

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MAR 05 2010

FILE:

[REDACTED]
(CDJ 2004 765 450)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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).

Perry Rhew

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 under section 212(a)(9)(B)(i)(II) of 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. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

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 February 16, 2007.

On appeal, counsel for the applicant asserts that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to demonstrate the requisite level of extreme hardship to his spouse. *Form I-290B, Notice of Appeal to the Administrative Appeals Office and attached statement.*¹

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, psychological evaluations of the applicant's spouse; statements from the adult children of the applicant's spouse; a medical letter for the applicant's spouse; a travel itinerary and airline boarding pass; statements from the applicant's spouse; a statement from the applicant's stepfather; a statement from the applicant's spouse's employer; employment letters for the applicant's spouse; loan statements; a car payment statement; a car insurance statement; credit card bills; a cellular telephone bill; an electric bill; a gas bill; and tax records and W-2 forms for the applicant and his spouse. 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-

....

¹ The AAO notes that the record indicates that the applicant may now be represented by another attorney. However, as this individual has failed to submit a Form G-28, Notice of Appearance as Attorney or Representative, authorizing his representation of the applicant, the AAO will continue to recognize the attorney who submitted the applicant's appeal as her counsel of record.

(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 case, the record indicates that the applicant entered the United States without inspection in June 1999 and voluntarily departed in March 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated March 10, 2006. The applicant, therefore, accrued unlawful presence from June 1999 until he departed the United States in March 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his March 2006 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 are 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 would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative 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 (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's spouse was born Mexico. *Form I-130, Petition for Alien Relative*. The record does not address how the applicant's spouse would be affected if she resides in Mexico. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record does not indicate whether the applicant's spouse speaks Spanish and how her language abilities, or lack thereof, would affect her adjustment to Mexico. The AAO notes that the record includes medical documentation from a licensed healthcare provider that establishes that the applicant's spouse suffers from hypothyroidism, shoulder pain and knee pain. *Statement from [REDACTED]* dated April 23, 2007. The record, however, does not demonstrate that the applicant's spouse would be unable to receive adequate care in Mexico for her health problems. 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 I-130, Petition for Alien Relative*. The applicant's spouse's adult children reside in the United States, while her parents are deceased. *Psychological assessment from [REDACTED]*, dated February 3, 2008. The applicant's spouse states that she is unable to pay all of her bills on her income. *Statement from the applicant's spouse*, dated March 19, 2007. The AAO observes that the record includes documentation of various expenses for the applicant's spouse, including a mortgage statement that indicates she is two payments behind on her mortgage. *See loan statements; a car payment statement; a car insurance statement; credit card bills; a cellular telephone bill; a utility bill; a gas bill; tax statements and W-2 forms for the applicant and his spouse*. While the AAO acknowledges the statements of the applicant's spouse and the supporting documentation, it notes that the record fails to demonstrate that the applicant would be unable to contribute to his family's well-being from a location other than the United States. The record does not include documentation, such as published country conditions, regarding the economy or the availability of employment in Mexico.

As previously discussed, medical documentation in the record establishes that the applicant's spouse has suffered from hypothyroidism since 1989 and is on medication for this condition. *Statement from [REDACTED]*, dated April 23, 2007. However, her symptoms have recurred and a medical workup has been initiated to determine the cause. *Id.* The medical statement also notes that

the applicant is working two jobs and the physical stress of her employment is causing excessive wear and tear on her physique, resulting in shoulder and knee pain. *Id.*

The AAO notes that the record also includes two psychological evaluations of the applicant's spouse, dated March 15, 2007 and February 3, 2008, and an addendum, dated May 15, 2008. In the March 15, 2007 evaluation, the licensed healthcare professional reports that she spoke with the applicant's spouse on two separate occasions and obtained information through psychological testing. *Psychological assessment from [REDACTED]*, dated March 15, 2007. She found the applicant's spouse to be suffering from Major Depressive Disorder and to be experiencing panic attacks as a result of being separated from the applicant. *Id.* In the psychological evaluation conducted nearly one year later, the same licensed healthcare professional again interviewed the applicant's spouse on two separate occasions and conducted psychological testing and concluded that the applicant's spouse continues to manifest symptoms of significant depression, which along with intermittent panic attacks, have become chronic. *Psychological assessment from [REDACTED]*, dated February 3, 2008. The applicant's spouse's overall functioning appeared to have deteriorated and the therapist recommended that the applicant's spouse seek therapy to shore up her mood and failing emotional resilience. *Id.* In a May 19, 2008 addendum to her evaluations, the therapist indicates that she has spoken to the applicant's spouse by telephone on three separate occasions since their meeting on February 3, 2008. *Addendum to Psychological Assessment*, dated May 19, 2008. She found the applicant's spouse consistently depressed and despairing of ever achieving her goal of being reunited with the applicant. *Id.* The therapist maintains the opinion that the outcome of the applicant's spouse's lengthy separation from the applicant will continue to affect her emotional and, likely, physical well-being. *Id.* The AAO notes that letters and statements from the applicant's spouse's employer and her family also report the significant change in her emotional health that has taken place in the applicant's absence. *Letter from [REDACTED]*, dated March 7, 2007; *statements from the applicant's children*, dated March 16, and March 19, 2007; and a *letter from [REDACTED]*, dated March 16, 2007. When looking at the aforementioned factors in the aggregate, particularly the applicant's spouse physical and emotional health, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's spouse caused by his 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.