

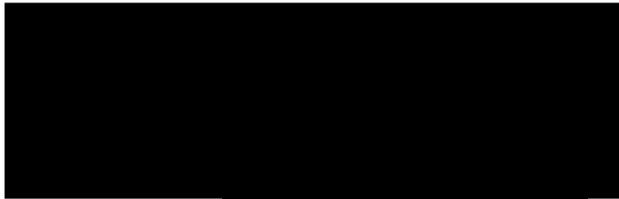
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 05 2010

FILE: [Redacted] Office: MEXICO CITY, MEXICO Date:
(CDJ 2002 852 133) (CIUDAD JUAREZ)

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:

SELF-REPRESENTED

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 admission 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.

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 February 9, 2007.

On appeal, the applicant's spouse states that he is disabled and needs his spouse to be with him. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of these assertions, the record includes medical records and prescriptions for the applicant's spouse; statements from the applicant's spouse; a disability decision from the Social Security Administration, Office of Hearings and Appeals; and a statement from the Social Security Administration. 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 case, the record indicates that the applicant entered the United States without inspection in July 1989 and voluntarily departed in November 2005, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated February 8, 2006. The applicant, therefore, accrued unlawful presence from July 1989 until she departed the United States in November 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her November 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 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 her inadmissibility is not directly relevant to the determination as to whether she 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 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 joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born Mexico. *Form I-130, Petition for Alien Relative*. The record fails to indicate whether the applicant's spouse has familial and cultural ties to Mexico. The AAO notes that the applicant's spouse suffers from neck and back pain

for which he is prescribed medicine. *Medical records and prescriptions for the applicant's spouse.* In 1992, he was declared disabled by the Social Security Administration, which found him to suffer from a severe back condition, including a lumbosacral strain with degenerative joint disease at the L4-5 and L5-S1 levels, with herniation at the L4-5 level. *Decision, Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals*, dated August 28, 1992. The applicant's spouse has not engaged in substantial gainful activity since May 15, 1988. *Id.* While the AAO acknowledges the documented medical conditions of the applicant's spouse resulting in his disability, it notes the record does not address how the applicant's spouse would be affected if he were to reside in Mexico. The record also does not establish that the medications he currently receives or adequate medical care would be available to him in Mexico. The record does not include documentation, such as published country conditions report, regarding the health care system in Mexico. The AAO acknowledges the applicant's spouse's inability to work due to his medical condition. *Id.* However, the record fails to establish that relocation would negatively affect the applicant's spouse's disability payments or that the applicant would be unable to obtain employment in Mexico and support both herself and her spouse. The record does not address how the applicant's spouse would be affected financially, physically, or psychologically if he were to reside in Mexico. When looking at the record before it, 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 was born in Mexico. *Form I-130, Petition for Alien Relative.* As previously noted, the applicant's spouse suffers from neck and back pain for which he is prescribed medicine. *Medical records and prescriptions for the applicant's spouse.* He has been declared disabled by the Social Security Administration, which found that he suffers from a severe back condition, including a lumbosacral strain with degenerative joint disease at the L4-5 and L5-S1 levels, with herniation at the L4-5 level. *Decision, Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals*, dated August 28, 1992. The applicant's spouse has not engaged in substantial gainful activity since May 15, 1988. *Id.* In addition to having persistent nonorganic disturbance of the movement and sensation of the limb, he also suffers from significant depression as well as a personality disorder involving pathological and inappropriate suspiciousness. *Id.* He was found to be unresponsive to psychotherapy and as not having the physical or emotional stamina to complete a rehabilitation program. *Id.* The applicant's spouse states that due to his disability, he cannot perform many tasks on his own. *Statement from the applicant's spouse*, undated. He further asserts that he needs care. *Statement from the applicant's spouse*, dated March 2006. He notes that the pain has decreased his ability to move and he needs the applicant to be with him. *Form I-290B.* When looking at the aforementioned factors, specifically the documented physical and psychological conditions of the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to remain in the United States without her.

However, as the record has failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States if he relocates to Mexico, the applicant is not eligible for a waiver of her 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 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.