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

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FILE:

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Office: CIUDAD JUAREZ, MEXICO

Date:

IN RE:

APPLICATION: Application for Waivers of Grounds of Inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 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 R. New

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 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 and under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. 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 and their child.

The Officer in Charge 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 Officer in Charge*, dated September 14, 2006.

On appeal, counsel for the applicant asserts that the applicant did not have the assistance of counsel and did not submit adequate documentation to support his Form I-601 waiver application. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*. Counsel further states that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) or section 212(a)(2)(A)(i)(I) of the Act, and in the alternative, the applicant merits a waiver because his family would experience extreme hardship. *Attorney's brief*, dated November 7, 2006.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse;¹ a statement from the applicant's mother-in-law; medical records for the applicant's spouse; a statement from the associate pastor at the applicant's church; criminal records for the applicant; and a psychological evaluation of the applicant conducted in connection with his immigrant visa application. 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 One of the applicant's spouse's statements is in Spanish and is not accompanied by a certified English-language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, it will not be considered by the AAO.

(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.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial

of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

In the present case, the record indicates that the applicant entered the United States without inspection in March 1997 and voluntarily departed in October 2005, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated November 14, 2005. The AAO further notes that the record also shows that on June 3, 2003 in the state of Wisconsin, the applicant was convicted of Theft-Movable Property less than or equal to \$2500, received a withheld sentence, and was placed on probation for one year. On June 3, 2003 in the state of Wisconsin the applicant was also convicted of Criminal Damage to Property, received a withheld sentence, and was placed on probation for one year. *Judgment of Conviction, Circuit Court, Racine County, Wisconsin*, dated October 29, 2003.

Counsel asserts that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The AAO observes that although counsel states the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act, he does not offer any explanation for this claim. It finds the record to establish that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in October 2005. In applying for an immigrant visa, the applicant is seeking admission with ten years of his October 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.

Counsel also asserts that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act as he has committed only one crime involving moral turpitude and the petty offense exception applies. While the AAO notes counsel's claim, it will not, in light of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, consider whether the applicant's criminal history bars his admission to the United States. The applicant's eligibility for a waiver under section 212(a)(9)(B)(v) of the Act will also waive any inadmissibility under section 212(a)(2)(A)(i)(I). The AAO notes that, even if the applicant were to establish extreme hardship to his children under section 212(h) of the Act, he would still have to demonstrate extreme hardship to his spouse under section 212(a)(9)(B)(v).

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 child 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 is a native of Mexico. *Naturalization certificate*. Her parents and family live in the United States. *Statement from the applicant's spouse*, dated October 18, 2006. The applicant's spouse states that she and her child live with her parents because she has a low income and cannot afford rent. *Id.* She further notes that her father has been disabled for several years due to an illness, and that he is unable to walk and does not have a job. *Id.* The AAO notes that the applicant's spouse does not indicate whether her father, with whom she resides, is dependent upon her in a way that would affect her if she were to move to Mexico. The applicant's spouse asserts that she could not go back to Mexico to stay. *Id.* She states that she wants her child to have a good education and better opportunities than she had being originally from Mexico. *Id.* While the AAO acknowledges this statement, it notes that the applicant's child is not a qualifying relative for the purpose of this case and the record fails to document how any hardship the applicant's child might encounter would affect her mother, the only qualifying relative in this case. The applicant's spouse asserts that her family's life would turn into a daily struggle if she and her child moved to Mexico. *Id.* The AAO notes that the applicant's spouse states that the applicant was able to find a part-time job in Mexico. *Id.* There is nothing in the record to demonstrate that the applicant's spouse would be unable to find employment in Mexico and contribute to her family's financial well-being. 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. As previously noted, the applicant's spouse is a native of Mexico. *Naturalization certificate*. Her parents and family live in the United States. *Statement from the applicant's spouse*, dated October 18, 2006. The applicant's spouse states that she has a part-time job as a clerk at a clothing store where she earns approximately \$8.00 an hour. *Id.* She notes that she and her child live with her parents because she cannot afford rent. *Id.* She asserts that the applicant hardly earns any money in Mexico and could not support his family with his current salary. *Id.* While the AAO acknowledges these assertions, it notes the record fails to include

documentation, such as published country conditions reports, regarding the economy and availability of employment in Mexico. The record does not include documentation regarding the earnings of the applicant. Furthermore, the record does not include documentation, such as mortgage/bill statements, utility bills, or credit card statements, regarding the expenses of the applicant's spouse, nor does the record include earnings statements, W-2 forms, or tax statements for the applicant's spouse showing her wages. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse states that she often feels like crying, but she tries to control herself and be strong for her child. *Statement from the applicant's spouse*, dated October 18, 2006. According to the mother of the applicant's spouse, there are times when the applicant's spouse cries a lot. *Statement from the applicant's spouse's mother*, dated October 13, 2006. She has observed the applicant's spouse being unable to sleep due to the uncertainty of her situation and notices that she hardly eats, is very depressed, dreads being separated from the applicant, and thinks a lot about her child. *Id.* She further observes that the applicant's spouse has not been the same person since the denial of the applicant's application. *Id.*

A medical report for the applicant's spouse indicates that she has been presenting symptoms of progressive fatigue, tiredness and increased lack of energy for the past 11 months and that these symptoms have intensified during the preceding two months. *Statement from* [REDACTED], dated September 21, 2006. Her symptoms are getting worse and are affecting her social and occupational functioning, as well as her ability to think. *Id.* The stressor in the applicant's spouse's life is the separation and dissolution of her family unit. *Id.* Her condition has become chronic. *Id.* Her physician recommends that she be evaluated by a psychiatrist and will benefit from an anti-depressive medication such as Lexapro to decrease her anxiety and depression. *Id.* He diagnoses her as having depressed mood, mixed anxiety, chronic insomnia and recurrent headaches. *Id.* The applicant's spouse states that she does not have health insurance and cannot afford treatment. *Statement from the applicant's spouse*, dated October 18, 2006. The mother of the applicant's spouse notes that she wishes that she and her husband had the means to take their daughter to a psychologist to receive help. *Statement from the mother of the applicant's spouse*, dated October 13, 2006. The associate pastor at the applicant's spouse's church reports that she has suffered terribly as a result of her separation from the applicant and that she needs medical attention as well as spiritual help. *Letter from* [REDACTED] dated September 20, 2006. When looking at the aforementioned factors, particularly the documented condition of the applicant's spouse's emotional health, the presence of her symptoms for 11 months prior to her evaluation by a physician, the medication prescribed to her, and the observations regarding the decline in her health made by her family and the associate pastor at her church, 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 has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she 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 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.