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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

H6

MAR 09 2010

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:
(CDJ 2003 788 158)

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.

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 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 her last departure from the United States. The applicant was also determined to be subject to section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and has a United States citizen child. She seeks waivers of her inadmissibilities in order to reside in the United States with her spouse and child.

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

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's Form I-601 waiver application as the applicant did establish that extreme hardship would be imposed upon a qualifying relative if her waiver application were denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an employment letter for the applicant's spouse; a psychological evaluation for the applicant's spouse; a school report card for the applicant's child; statements by the applicant's spouse; and medical notes and records for the applicant's child. 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 using another individual's visa in April 1991 and departed in December 2005. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated December 8, 2005. Counsel notes that the applicant was 12-years-old at the time she used the visa and therefore lacked the mental capacity to possess the mental intent to defraud. *Attorney's brief.* The AAO will not analyze whether the applicant is inadmissible under section 212(a)(6)(C) of the Act as the extreme hardship analysis required for a waiver under section 212(i) of the Act is the same as that required under section 212(a)(9)(B)(v).

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in December 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her December 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 or her child 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 in the United States. *Birth certificate*. The applicant's spouse states that he could not move to Mexico because he is not Mexican and does not have any residency in Mexico. *Statement from the applicant's spouse*, undated. The parents of the applicant's spouse were born in Mexico. *Birth certificate of the applicant's spouse*. The record does not address whether the applicant's spouse has any familial or cultural ties to Mexico. The record does not address whether the applicant's spouse speaks Spanish and how his language abilities, or lack thereof, may affect his adjustment 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 makes no mention of whether the applicant's spouse suffers from any type of health condition that would require treatment in Mexico, and if so, whether he would be able to receive adequate care. 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. As previously noted, the applicant's spouse was born in the United States. *Birth certificate*. The applicant's spouse notes that if the applicant's waiver application were denied, he would be devastated financially, as he would have to support the applicant in Mexico while supporting himself and their child in the United States. *Statement from the applicant's spouse*, undated. He further states that he is struggling financially because much of his income goes to support the applicant in Mexico. *Id.* He notes that he does not earn enough money to support two households and even if the applicant were to find employment in Mexico, he would have to supplement her income as wages in Mexico tend to be a few dollars a day. *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 to establish that the applicant is unable to obtain employment in Mexico and thereby reduce any financial burden on her spouse. 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 his annual salary. The record also provides no documentary evidence that the applicant's spouse is providing financial support to the applicant in Mexico. 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 also notes that he would be devastated emotionally if the applicant were not granted the waiver application. *Statement from the applicant's spouse*, undated. He notes that when he was 12 years old, his father was murdered and he struggled for many years to overcome that experience. *Id.* He asserts that losing the applicant would be unbearable and would once again put him in a state of depression. *Id.* A psychological evaluation for the applicant's spouse notes that the applicant's spouse stated his father was shot to death when the applicant's spouse was 12 years old and that the applicant's spouse attempted suicide in 1998. *Psychological evaluation from* dated December 29, 2006. The applicant's spouse stated to the therapist conducting the evaluation that the loss of the applicant might cause him to feel so defeated that life would have no meaning for him and that he would rather be dead. *Id.* In the therapist's opinion, the applicant's statements indicate that he might attempt suicide given that he tried to kill himself once before in 1998. *Id.* The therapist states that the applicant's spouse is depressed and that he is very concerned about the applicant's spouse's depression leading him to suicidal ideation. *Id.* The therapist recommends that the applicant's spouse go to psychotherapy as soon as possible and also highly recommends that he have a psychiatric evaluation to determine if psychotropic medication could help the applicant's spouse. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview with the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation rely solely on the account provided by the applicant's spouse of his emotions and history. The therapist does not address the symptoms or behavior shown by the applicant's spouse to support his conclusions, nor did he conduct psychological tests to gauge the applicant's spouse's mental health or personality. As such, the AAO finds the therapist's findings to be speculative and of diminished value to a determination of extreme hardship. Additionally, the record does not include statements from friends, family members, or coworkers of the applicant's spouse who have observed a change in his behavior or mood since the applicant's departure.

The therapist also reports the applicant's spouse's claims that his stepdaughter has experienced significant weight gain, is sleeping too much and having problems with school in her mother's absence. The AAO notes, however, that the therapist does not indicate that he has reviewed any documentation that would support such claims and there is no corroborating evidence in the record from a licensed healthcare professional or the applicant's daughter's school. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra.* Although the AAO acknowledges the difficulties the applicant's spouse may encounter as a single parent, the record does not contain sufficient evidence to demonstrate the extent to which his parental duties would result in hardship to him. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if she were to remain in the United States.

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.