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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office: ST. PAUL, MN

Date:

NOV 26 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 10 years of his last departure from the United States. The applicant's mother is a lawful permanent resident and he is seeking a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his mother and the application was denied accordingly. *Decision of the District Director*, dated December 11, 2006.

On appeal, counsel asserts that the district director erred in determining that the petitioner had failed to determine that she would suffer extreme hardship. *Form I-290B*, dated January 11, 2007.

The record includes, but is not limited to, counsel's brief, statements from the applicant's mother, statements from the applicant's family members, a loan statement for the applicant's home, photographs of the applicant's family, the applicant's tax returns, the applicant's mother's I-360 approval notice and information on conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States in 2000 and departed the United States in or around October 2002. The applicant accrued unlawful presence during this period of time and the ten-year bar was triggered by the applicant's departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Once 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. These factors include the presence of lawful permanent resident or U.S. 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's mother must be established in the event that she relocates to Mexico or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she relocates to Mexico. Counsel states that the applicant's mother is a single mother of nine children, six of whom are under 18 years old. *Brief in Support of Appeal*, at 2, dated February 8, 2007. The applicant's mother states that life in Mexico without a husband, six minor children and being almost 50 years old would be extremely difficult. *Applicant's Mother's Statement*, at 3-4, dated December 28, 2006.

Counsel states that the applicant's mother acquired her permanent residence under the Violence Against Women Act (VAWA) due to physical and emotional abuse from her spouse. *Brief in Support of Appeal*, at 2. The record includes a copy of the applicant's mother's I-360 Approval Notice. The applicant's mother states that she is worried that her husband will find her in Mexico and abuse her again, and that previously she did not have much help in Mexico in regard to her spouse's abuse. *Applicant's Mother's Statement*, at 2, 4. Counsel states that the applicant's mother would risk being victimized by her spouse as he frequently travels to Mexico and domestic violence laws are non-existent and rarely enforced in Mexico. *Brief in Support of Appeal*, at 11. The applicant states that his mother kept her recent trip to Mexico a secret due to fear of harm from her spouse. *Applicant's Statement*, at 1, dated February 8, 2007. The AAO notes that domestic violence is often perpetrated against women with impunity in Mexico. *U.S. Department of State, 2005 Mexico Country Reports on Human Rights Practices*, at 1, dated March 8, 2006.

Counsel states that the applicant's mother and her children would risk losing their lawful permanent resident status by returning to Mexico. *Brief in Support of Appeal*, at 9. The AAO finds this to be a plausible claim. Counsel states that the applicant's mother would have great difficulty finding a job due to her gender and lack of education. *Id.* at 8. The record is not clear as to whether the applicant's mother and/or the applicant would be able to financially support their family in Mexico. However, considering the applicant's mother's obligations to care for six children, the risk of losing her lawful permanent resident status and the unique domestic violence issues presented, the AAO finds that the applicant's mother would face extreme hardship upon relocation to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. Counsel states that the applicant has supported and protected his mother since she separated from her spouse. *Id.* at 3. As mentioned previously, the applicant's mother acquired her permanent residence under the Violence Against Women Act (VAWA) due to physical and emotional abuse from her spouse. The applicant's mother states that the applicant is not afraid of his father, he protects her, she does not drive, he takes her where she needs to go, he helps with the children as she does not speak or read English, he talks to their teachers and he translates the notes and announcements from their school. *Applicant's Mother's Statement*, at 3-5. Counsel states that the applicant has provided his mother and siblings a safe home removed from abuse and neglect, and they feel protected and secure. *Brief in Support of Appeal*, at 8. The applicant states that he is the primary breadwinner of the home and the protector of the family. *Applicant's Statement*, at 1. The AAO notes that the applicant's 2005 federal tax return lists four of his siblings as dependents. *Applicant's 2005 Form 1040*, at 1, undated.

The applicant's mother states the applicant pays most of the bills, it will be difficult for her to find a job as she does not drive or speak English, and she will have to sell the house if the applicant leaves. *Applicant's Mother's Statement*, at 3. Counsel states that the applicant's mother's eldest son has his own wife and child to care for and her other son is working to pay his college tuition. *Brief in Support of Appeal*, at 7. The record includes several bills for the applicant's mother.

Considering the unique emotional, protective and financial support that the applicant provides to his mother, the AAO finds that extreme hardship has been established in the event that the applicant's mother remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded

and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300.

The main adverse factors in the present case are the applicant's unlawful entry and presence.

The favorable factors include the presence of the applicant's U.S. citizen and lawful permanent resident family members, the lack of a criminal record, extreme hardship to his mother and the applicant's good character, as evidenced by statements in the record.

The AAO finds that the applicant's violations are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.