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U.S. Citizenship
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Services

[Redacted]

H4

FILE:

[Redacted]

Office: CIUDAD JUAREZ, MEXICO

FEB 20 2007
Date:

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]

PUBLIC WORKS

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Ciudad Juarez, Mexico. 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 is married to a U.S. citizen and seeks 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 a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated February 16, 2006.

On appeal, counsel asserts that the applicant's spouse is suffering extreme hardship. *Brief in Support of Appeal*, at 5, undated.

The record includes, but is not limited to, statements from the applicant's spouse, a psychological evaluation, photographs and letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1992. The applicant remained in the United States until April 6, 2005. Therefore, the applicant accrued unlawful presence from the date he entered the United States in 1992 until April 6, 2005, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his April 6, 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 a lawful permanent resident or United States citizen family ties to the United State, 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 in the event that she resides in the Mexico or in the event that she resides 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 applicant is currently residing in Mexico.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Mexico. The applicant's spouse states she is attending college and majoring in psychology. *Applicant's Spouse Third Statement*, at 1, dated March 13, 2006. She states that she would not be able to fulfill her career goals in Mexico. *Applicant's Spouse's First Statement*, at 1, dated March 31, 2005. The record includes evidence of the applicant's spouse's enrollment at Hartnell College and her academic transcript. The applicant's spouse states she was born in the United States and she lives near her five siblings in Salinas, California. *Applicant's Spouse Third Statement*, at 2. The applicant's spouse states that she speaks Spanish, but English is her best language. *Id.*

The applicant's spouse states that she went to live with the applicant for six months in Mexico, she was not able to find a job, the applicant was barely making enough money for food and they experienced extreme financial hardship. *Applicant's Spouse's Second Statement*, at 1, dated November 22, 2005. The applicant's spouse's parents state that she returned from Mexico due to poor healthcare and poverty. *Affidavit of the Applicant's Spouse's Parents*, undated. Counsel states that the applicant's spouse has health insurance through her job at a bank, she is expecting her first child, and she would not have this health insurance for

herself and her baby if she were in Mexico. *Brief in Support of Appeal*, at 4-5.¹ The record includes a letter from a bank manager which reflects that the applicant's spouse is employed at the bank, she took a leave of absence to be with her husband, and her financial situation in Mexico did not allow her to obtain good medical care. *Letter from* [REDACTED] dated November 23, 2005. Counsel states that the applicant was making \$34,000 annually in the United States and his spouse is making \$32,000 annually. *Supplemental Letter*, at 2, dated November 28, 2005. The applicant's spouse states that her grandparents reside in Mexico, but they are being supported by her parents. *Applicant's Spouse's Second Statement*, at 2.

Considering the applicant's spouse's family ties to the United States, her lack of ties to Mexico, her difficulties in attempting to reside in Mexico previously, her loss of educational opportunity, and the prospect of raising a young child in Mexico with little income, the AAO finds that the applicant's spouse will face extreme hardship if she resides in Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse will not be able to finish school as a single parent working full-time. *Supplemental Letter*, at 2. The psychologist states that the applicant's spouse moved back with her parents in order to survive financially, she has felt extremely depressed and anxious due to concerns of raising her child alone, and there is evidence to indicate suicidal behavior. *Psychological Evaluation*, at 2, dated March 11, 2006. The applicant's spouse states that three of her siblings also live in her parent's house. *Applicant's Spouse's Second Statement*, at 1. The psychologist states that the applicant's spouse is suffering from depression and anxiety, and she recommends psychotherapy and evaluation by a physician. *Psychological Evaluation*, at 3. Although this is a one time evaluation which is generally given diminished weight, uncommon emotional hardship is reflected as the applicant's spouse has been referred to therapy and she has indicated suicidal behavior. The applicant's spouse details the various activities that she and the applicant do together and their closeness to each other. *Applicant's Spouse's First Statement*. The record includes letters verifying the difficulties that the applicant's spouse is facing without the applicant. Considering the loss of educational opportunity, the difficulty in raising a child as single parent, and the emotional issues of the applicant's spouse, the AAO finds that separation will result in extreme hardship to the applicant's spouse.

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

¹ The applicant's spouse's expected delivery date was April 14, 2006. *Letter from* [REDACTED], dated November 15, 2005. The record has not been updated with a birth certificate.

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-Moralez, 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. (Citations omitted).

The favorable factors for the applicant include his U.S. citizen spouse and child, an approved I-130 petition, lack of a criminal record, and extreme hardship to his spouse.

The unfavorable factor is the applicant’s unlawful presence.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.