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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ Date: NOV 05 2009

(CDJ 2003 573 213)

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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, and 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 resided in the United States from March 1998, when he entered without inspection, until March 2004, when he returned to Mexico. He was found to be inadmissible under 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with his wife and children.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge* dated May 14, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if the applicant is removed from the United States. The applicant's wife states that she is suffering hardship due to separation from the applicant because she must work and raise their three children on her own and does not make enough money to pay all the family's expenses. *See Affidavit of* [redacted] at 2-3. She further states that she is tired from working long hours and taking care of the children and the family's expenses alone, and she needs the applicant's financial and emotional support. *Affidavit of* [redacted] at 4. She states that she and their children would suffer extreme hardship if they relocated to Mexico because they do not speak Spanish and would have difficulty adapting to life in Mexico, the children would have difficulty in school, and they would be separated from relatives in the United States, including the applicant's mother-in-law, who helps care for the children. *Affidavit of* [redacted] at 5-6. In support of the appeal and waiver application counsel submitted the following documentation: Letters and affidavits from the applicant's wife, letters from friends and relatives of the applicant and his wife, letters from the school attended by the applicant's oldest son, a letter from the applicant's wife's doctor, a list of the family's expenses and bills and other financial documents, documentation related to the home owned by the applicant and his wife, income tax returns for the applicant's wife and letters from her employer and co-workers, and copies of family photographs. The applicant also submitted copes of court dispositions for his arrests for driving under the influence, possession of a prohibited weapon, and other criminal charges. 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:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> > (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 Secretary, 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 waiver of the bar to admission resulting from 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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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, 565-566 (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(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

In the present case, the record reflects that the applicant is a twenty-seven year-old native and citizen of Mexico who resided in the United States from March 1998, when he entered without inspection, until March 2004. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant's wife is a twenty-seven year-old native and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Holdrege, Nebraska with their sons.

Counsel asserts that the applicant's wife would suffer extreme hardship in Mexico because she would be separated from her family members in the United States, where she has lived her entire life, and would lose her employment in the United States and have difficulty adapting to the language and culture in Mexico. *Brief in Support of Waiver Application* at 12-13. Counsel further states that because she does not speak Spanish and because of economic conditions, the applicant's wife would have difficulty finding employment in Mexico, and cites a 2004 U.S. State Department report stating that the minimum wage does not support a decent standard of living for workers and their families. *Brief* at 13. In her affidavit the applicant's wife states that it would be extremely difficult for her and her children both financially and psychologically to relocate to Mexico where the lifestyle is very different and where she would have difficulty finding a job because she does not speak Spanish. *Affidavit of* [redacted] at 5. She would also have to give up her job as a printer/ Metro Machine Operator, which is a matter of "personal pride" for her and where she has moved up the ranks. She further states that she and her children would suffer hardship because they would be separated from her mother and stepfather, who live nearby and help care for the children, as well as all their other family and friends in Nebraska. *Affidavit of* [redacted] at 6.

The evidence on the record, including letters and affidavits from the applicant and her family members and documentation of her employment, as well as information on conditions in Mexico cited by counsel indicates that the applicant's wife would suffer extreme hardship if she relocated to Mexico. The applicant's wife was born in the United States, does not speak Spanish, and would be separated from her family members in the United States, including her parents and grandfather who reside close to her and are helping take care of her children. The emotional effects of severing her ties to the United States, losing her home and employment, and having to adjust to conditions in Mexico, combined with financial hardship and a reduction in standard of living in Mexico, would amount to extreme hardship if the family relocated to Mexico to reside with the applicant.

Counsel asserts that the applicant's wife would suffer financial hardship if the applicant is denied admission to the United States because she does not earn enough on her own to meet the family's expenses and needs the applicant's financial support. *Brief* at 15-16. The applicant's wife states that her take-home pay is about $2000 per month and she needs the applicant's financial support to pay their bills, and will likely lose their home and car if he does not return. *Affidavit of* [redacted] at 3. She states that she has a mortgage payment of $418 per month and pays $480 per month to her mother for daycare, which is substantially less that the usual cost of full-time childcare. The applicant's wife also states that the applicant is an excellent husband and father and has played a kev role in raising their children. *Affidavit of* [redacted] at 4. She states that it would be devastating for her and their children to be separated from the applicant and would leave them feeling widowed and orphaned. *Id.* She further states that they would be "financially ruined, devastated, and

saddened emotionally," with financial hardship resulting from her inability to keep up the schedule that she is currently maintaining. *Id.* at 7.

The record contains documentation indicating that the applicant's wife earned $30,766 in 2004 and $26,643 in 2003. She is supporting three children with this income and has a mortgage payment of $418 per month, a car payment of $254 per month and an outstanding loan for repairs on the car with a monthly payment of $170 per month. Credit card statements submitted with the waiver application indicate that in the months after the applicant departed the United States in March 2004, the applicant's wife began using the credit card to pay for daily living expenses, and the balance on the cards increased from about $100 to $200 in mid-2004 to close to or over the $1000 limit on the account, particularly after the birth of their third child in September 2004.

Documentation on the record further indicates that the applicant's oldest son is developmentally delayed and that having to work full-time and care for her children on her own has made it difficult for the applicant's wife to provide him with appropriate learning opportunities. *See letter from* [redacted]. The school psychologist who evaluated the applicant's son for developmental delays states that she is impressed by the determination of the applicant's wife to provide her children with a nurturing environment, but states, "The disruption of the family unit, for this particular family, has been incredibly difficult, and the lack of a father figure for emotional support, educational support and financial support is clearly not in the best interest of the children." *Id.* A letter from an early childhood special educator who has worked with the applicant's son for about three years states that he was born premature and has had developmental delay since that time. *Letter from* [redacted], dated August 22, 2005. The letter further states that the applicant's wife is exhausted from "going through the birth of their third child alone, caring for three small children while working full time, and being her family's only means of income," and she is experiencing significant emotional stress. *Id.* The letter further states that the applicant's son had a very difficult time during the last school year because he went from school to day care until the applicant's wife got home from work at 11 pm, and that she later took him out of school so he could spend more time with her, which prevented him from benefiting from interaction with children his age and "gaining from . . . modeling of language and play". *Id.*

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife is experiencing extreme hardship due to separation from the applicant, including emotional hardship due to the stress of raising three children alone and coping with her son's developmental delay, and financial hardship due to loss of the applicant's financial support. The evidence on the record indicates that the applicant's wife must work full-time and also raise three small children, and has had difficulty addressing her son's developmental delay on her own due to her work schedule. The evidence on the record further indicates that the applicant's wife, despite working full-time and overtime, is having difficulty paying the family's expenses, and credit card statements indicate that she began to rely on credit card more since the applicant's departure and thus increased the family's debt. Further, as noted above, separation from close family members is a primary concern is assessing extreme hardship, and the applicant's wife would continue to suffer emotional hardship if she remained in the United States without the applicant. *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998).

The AAO finds, however, that the applicant does not merit a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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 a waiver 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-Moralez, supra.* The AAO must then "balance 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 negative factors in this case are the applicant's illegal entry and six years of unlawful presence in the United States, his two convictions for driving while intoxicated as well as convictions for driving with a suspended license, possession of a prohibited weapon (knuckles – finger rings or guards), and criminal mischief. The applicant was also found to suffer from alcohol dependence and to have abused drugs in the past, and a psychological evaluation conducted in 2005 found his prognosis to be guarded, with "a pattern of alcohol abuse with evidence of harmful behavior that is likely to recur." *See Psychological Evaluation from* [redacted] Further, the applicant was involved in a serious automobile accident in 2002 in which he was intoxicated and allowed a friend who was also intoxicated to drive his car. In addition, the negative factors include his initial entry without inspection, and periods of unauthorized presence and employment.

The positive factors in this case include the applicant's family ties to the United States, including his wife, three children, and mother-in-law; hardship to the applicant's family members, in particular his son who suffers from developmental delays, if he is denied admission to the United States; and property ties in the United States.

The applicant was convicted of several crimes in the United States, including two convictions for driving under the influence, and was later involved in a serious automobile accident when he was

intoxicated and allowed a friend who was also intoxicated to drive his car. According to a psychological evaluation and other documentation on the record, the application has been found to have a psychological disorder of alcohol dependence and has not undergone treatment for this condition, despite his involvement in a serious automobile accident while intoxicated in 2002. The AAO finds that the negative factors in the present case outweigh the positive ones and the applicant does not merit a waiver as an exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden that he merits approval of his application.

ORDER: The appeal is dismissed.