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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 765 331 RELATES)

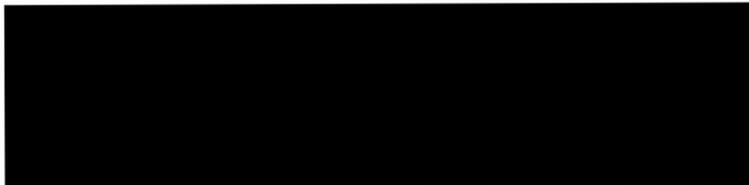
JAN 04 2010

IN RE: Applicant:



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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in November 2002 and did not depart the United States until October 2005. The applicant was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 16, 2006.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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....

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, the applicant's spouse's child and/or extended family members cannot be considered, except as it may affect the applicant's spouse.

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. With respect to this criteria, the applicant's spouse contends that he will suffer emotional and financial hardship. In a declaration he states that his spouse is experiencing emotional hardship in Mexico, which in turn is causing the applicant's spouse extreme hardship. He asserts that his spouse has been diagnosed with depression due to long-term separation from her spouse, and has been seeing a psychologist twice a week since January 2006. He further notes that his spouse recently suffered a miscarriage, which he believes was caused by her living conditions, her depression and her fear of being a victim of crime, exasperating her depression and anxiety. Due to his spouse's emotional hardship, the applicant's spouse confirms that he had to travel to Mexico on many occasions to visit his spouse and see to her well-being, and these trips contributed to his losing his job. Although he obtained a new job after six months of unemployment, he has not been permitted to take many days off to travel to Mexico to visit his spouse since the miscarriage, thereby exasperating his and his spouse's hardship. The applicant's spouse asserts that his spouse's hardships while in Mexico have created stress and anxiety, and he has had to join a support group to help with his own stress and depression. He has been attending weekly sessions since November 2005 at the National Alliance on Mental Illness (NAMI). *Letter from* [REDACTED] dated September 21, 2006.

To support the applicant's spouse's assertions, a letter has been provided by [REDACTED] National Alliance on Mental Illness (NAMI) Orange County, confirming that since November 2005, the applicant's spouse has been attending a support group for patients and their family members who suffer mental illness. [REDACTED] further confirms that the applicant's spouse joined the group "to learn more about his symptoms of severe depression due to the separation from his wife [REDACTED] [the applicant]..." *Letter from [REDACTED] NAMI Orange County*, dated September 27, 2006. In addition, a letter has been provided from the applicant's spouse's previous employer, confirming that he exceeded the time allowed for his personal time off without pay and was terminated. *Letter from [REDACTED]*, dated April 10, 2006.

Moreover, a letter has been provided confirming that the applicant's spouse has been diagnosed with Depression due to long-term separation from her spouse, and has been attending psychological sessions twice a week since January 2006. *Letter and Translation from [REDACTED]* dated September 18, 2006. Finally, a letter has been provided by [REDACTED], establishing the applicant's miscarriage in September 2006, and confirming that she is suffering from severe depression and anxiety; [REDACTED] suggests that the applicant continue psychological aid. *Letter and Translation from [REDACTED]* dated September 18, 2006.

In addition to emotional hardship due to his spouse's inadmissibility, the applicant's spouse contends that he is suffering financial hardship. As a result of the above-referenced issues being suffered by the applicant's spouse while in Mexico and his need to travel there to care for her, the applicant's spouse lost his job and was unemployed for six months, as noted above, and has gone into debt. He states that he is maintaining two households, one in Mexico and one in the United States, due to the applicant's inability to obtain gainful employment in Mexico. Finally, he notes that he has a daughter from a previous marriage, born in 1997, and due to the financial difficulties he is experiencing, he is having trouble paying child support and is unable to see her often, as she lives seven hours away and the travel costs are prohibitive. *Supra* at 1-3. The applicant confirms that she is unable to obtain work in Mexico to assist with the finances, because she is a woman and there is no work. *Letter and Translation from [REDACTED]* dated September 18, 2006.

The record reflects that the applicant's spouse is suffering extreme emotional and financial hardship due to his spouse's inadmissibility, due to his and spouse's depression and the emotional and financial costs associated with their care and well-being. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse contends that he moved to Mexico after meeting the applicant and experienced numerous hardships while there and as such, a relocation to Mexico would cause him extreme hardship. He asserts that there were poor job opportunities in Mexico. He notes that if he was able to find a job, it was only for one to two days and he got paid \$100.00

pesos, which is the equivalent of \$10.00 US dollars. He was unable to maintain a decent standard of living. He notes that there is no family nearby to depend on or to get support from. As they have no property in Mexico, he states that the applicant has had to rent a place that is in poor condition; it only has running water at certain times, the roof is sheet-metal and it is very cold as the house has no heater. Furthermore, he contends that he would have to leave behind his ill mother and his daughter, and would be unable to provide the financial and emotional support his daughter needs. *Supra* at 1-3.

The applicant further elaborates on the hardships in Mexico:

The conditions in my country are not good because the jobs are poorly paid and he [the applicant's spouse] could not support the family and pay his daughter's child support and of the children we'll soon have. In my town there are social problems and I cannot go out alone.... In the town where I live there is a lot of delinquency because of the extreme poverty and the absence of the fathers who because he is looking for bread for his family has to leave the town and has to neglect their education and they enter into the homes to steal they can even assault you on the road and there's been cases of kidnapping....

Supra at 3.

Were the applicant's spouse to relocate to Mexico to reside with the applicant due to her inadmissibility, he would suffer emotional hardship, as he would be separated from his daughter, his extended family, including his mother and four siblings, his employment, and his support network of friends. Moreover, he would not be able to continue his participation with NAMI, where he has been seeking support since November 2005 for severe depression. In addition, he would encounter financial hardship due to the problematic economic situation in Mexico. As such, the AAO concludes that based on a totality of the circumstances, the applicant's spouse would experience extreme hardship were he to relocate to Mexico to reside with the applicant due to her inadmissibility.

The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Further, the AAO notes that the applicant's U.S. citizen spouse would suffer hardship as a result of continued separation from the applicant. However, the grant or denial of the waiver does not turn only on the establishment of extreme hardship. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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-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 in this matter are the applicant's U.S. citizen spouse, the hardships that the applicant's family would face if the applicant were not present in the United States, community ties, support letters from family and friends, the apparent lack of a criminal record, and the passage of more than seven years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry to the United States and unlawful presence while in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardships imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted

In proceedings for 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. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.