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

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FILE:

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: OCT 22 2008

IN RE:



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:

SELF-REPRESENTED

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, Mexico City, Mexico (Ciudad Juarez). 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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated October 6, 2006.

On appeal, the applicant asserts that he has demonstrated that his qualifying relative would suffer extreme hardship if his waiver request is denied. *Form I-290B and attachment*.

In support of these assertions the record includes, but is not limited to, statements from the applicant's spouse; charity donation receipts; photographs; a statement from the mother of the applicant's spouse; a statement from the applicant's spouse's psychotherapist; an employment letter for the applicant's spouse; statements from friends; a medical prescription for the applicant's daughter; bankruptcy court documentation; mortgage default records and bills; car insurance claim records; statements of credit denial; a statement from Commerce City property; earnings statements for the applicant's spouse; and a notice of default and acceleration. 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 application, the record indicates that the applicant entered the United States without inspection in April 1999 and remained until his departure in November 2005. *Visa Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated November 16, 2005. As such, the applicant accrued unlawful presence from April 1999 until November 2005. In submitting the Application for Immigrant Visa and Alien Registration (DS-230), the applicant is seeking admission within ten years of his November 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 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. The plain language of the statute indicates that hardship that the applicant himself or his child would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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 she resides in Mexico or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States to Mexican parents. *Birth certificate*. The record does not address what family members, if any, the applicant's spouse may have in Mexico. The applicant's spouse states that she cannot live in Mexico because the conditions are poor. *Statement from the applicant's spouse*, dated May 14, 2008 and June 3, 2008. Photographs of the applicant's home in Mexico are included in the record to support such assertions. *See photographs*. The applicant's

spouse states that if she goes to Mexico, she would leave her parents in a bad economic situation. *Statement from the applicant's spouse*, dated June 3, 2008. The father of the applicant's spouse has had a stroke and it is difficult for him to move. *Statement of the applicant's spouse*, dated May 14, 2008; *Statement from the mother of the applicant's spouse*, dated April 4, 2008; *Statements from co-workers*, dated November 26, 2007. The parents of the applicant's spouse would lose their house because they cannot pay all of the bills. *Statement from the applicant's spouse*, dated May 14, 2008. The mother of the applicant's spouse supports this assertion, noting the difficulties her own family would endure if the applicant's spouse went to Mexico. *Statement from the mother of the applicant's spouse*, dated April 4, 2008. The applicant's spouse helps to pay her mother's bills and half of the rent. *Id.* If the applicant's mother did not have her daughter's support, she and her husband would have to file for foreclosure, as they would not have a place to live. *Id.* When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has undergone bankruptcy proceedings and has lost her home. *Statement from the applicant's spouse*, dated November 27, 2007; *Bankruptcy court documents, United States Bankruptcy Court for the District of Colorado; Mortgage default records, the CIT Group/Consumer Finance, Inc.*, dated March 4, 2006 and May 16, 2006. According to the psychological evaluation of the applicant's spouse, her financial troubles as well as depressive symptoms are due in great part to the absence of her husband, and the financial support that he provided while the family was intact. *Statement from [REDACTED], MSW, Psychotherapist, Salud Family Health Centers*, dated December 24, 2007; *See also statements from co-workers*, dated November 26, 2007. The applicant's spouse states that it is very difficult for her to be a single mother, having her husband in another country. *Statement from the applicant's spouse*, dated September 18, 2008. She has had to arrange for child care, schooling, pay expenses, and parent all by herself. *Id.* She had had to place burdens on family and friends that should be shared between her and her husband. *Id.* She asserts that without having a second income to help during these hard economic times, she has to live in her parents' basement and sometimes has to make difficult choices between having food on her family's plate or to pay other expenses. *Id.* The AAO notes that the applicant's spouse went to the Salud Family Health Centers clinic stating that ever since her husband was deported to Mexico, she has experienced symptoms consistent with a major depressive episode. *Statement from [REDACTED], MSW, Psychotherapist, Salud Family Health Centers*, dated December 24, 2007. The applicant's spouse's supervisor at work has noticed a change in her physical and mental state, including a noticeable amount of weight loss. *Statement from [REDACTED], AVP/Operations Officer, Guaranty Bank and Trust*, dated November 26, 2007. Her co-workers have also noticed that the applicant has become very stressed, depressed and sad. *Statements from co-workers*, dated November 26, 2007. The applicant's spouse states that her life has gone down, including her self-esteem and everything that she has worked hard to get. *Statement from the applicant's spouse*, dated November 27, 2007. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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).

The adverse factors in the present case are the applicant's entry into the United States without inspection and his subsequent unlawful presence for which he now seeks a waiver. The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his supportive relationship with his spouse, and his lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when 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.