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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

H2

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO  
CDJ2001 596 360 (relates)

Date: AUG 13 2009

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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City (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 ten years of her last departure from the United States. The applicant is married to a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated June 26, 2006, the district director found that the record failed to establish extreme hardship to the applicant's U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO, dated July 27, 2006, counsel states that the district director erred in denying the applicant's waiver application because the applicant has shown that her U.S. citizen spouse will suffer extreme and unusual hardship as a result of her inadmissibility.

The record indicates that the applicant entered the United States without inspection in December 1995 and remained in the United States until June 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until June 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her June 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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico and 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 AAO will consider the relevant factors in adjudication of this case.

The record of hardship includes counsel's brief, a statement from the applicant's spouse, a statement from the applicant's daughter, a letter from the applicant's spouse's doctor, a psychological report

for the applicant's spouse, documentation regarding the applicant's spouse's employment, and documentation regarding the applicant and her spouse owning property in the United States. The AAO notes that the record includes a letter from the applicant's spouse's sons written in Spanish with no certified English translation attached. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In a statement, dated July 27, 2006, the applicant's spouse states that ever since he received notice of the applicant's waiver denial he has felt depressed. He states that he feels depressed and sick and went to see a doctor about these feelings. He states that the applicant's inadmissibility would cause him extreme financial and mental hardship. He states that he earns \$500 per week and has health insurance through his employer. He also states that he has lived in the United States for the past twenty-eight years, his sons are all lawful permanent residents, and his whole extended family lives in the United States. He states that if he left the United States to live with his wife in Mexico he would find it extremely difficult to find a job and financially support himself and his wife. He also states that relocating to Mexico would mean he would have to sell his home, stop receiving medical treatment in the United States, lose his social security benefits in the United States, and face criminality and abuse.

In a statement, dated July 14, 2006, the applicant's daughter states that her mother is alone in Mexico with cardiac problems and needs medical attention. She also states that her mother's spouse is a diabetic and requires attention that she cannot give him because she works.

In a letter from the applicant's spouse's doctor, dated July 14, 2006, [REDACTED] states he is treating the applicant's spouse for diabetes, hyperlipidemia, sinusitis, and an occurrence of prostatitis. He also states that the applicant's spouse has recently complained of depression due to missing his wife.

In a psychological report, dated July 14, 2006, a [REDACTED] states that the applicant's spouse was referred to his office by the applicant's spouse's attorney. [REDACTED] states that the aggregate of the applicant's spouse's failing health, sense of physical malaise, and difficulty in providing for his basic self-care has exacerbated his physical symptoms and has developed into reactive depression. He states that the applicant's spouse is also experiencing a pervasive sense of loneliness and despair in his wife's absence, as his wife is the only source of support and care for his ailments. [REDACTED] states that the applicant's spouse feels abandoned, which triggers in him a sense of despair, worthlessness and suicidal ruminations. He describes the applicant's spouse's situation as severe and from a psychological perspective can be helped by the presence of his spouse.

The AAO notes that the record shows that the applicant is employed at Saturn Machine, Inc. works 50 hours per week, and earns approximately \$500 per week. The record also shows that the applicant owns a home in the United States.

The AAO finds that taking the applicant's spouse's situation in the aggregate and given his medical problems and advanced age<sup>1</sup>, it would be an extreme hardship for him to be separated from the applicant, his caretaker.

In addition, in her brief, counsel states that the 2005 State Department Country Report on Human Rights in Mexico states various human rights problems occurring in the country. Counsel also states that relocating to Mexico would mean the applicant's spouse would have to leave his employer, return to a country where he has not lived for thirty years, leave his family, and try to find new employment (without formal education as a 71-year-old man) and access to medical care. Thus, the AAO also finds that taking the applicant's spouse's situation in the aggregate he would also suffer an extreme hardship as a result of relocating to Mexico to be with the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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-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 adverse factors in the present case are the applicant's illegal entry and unlawful presence in the United States.

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<sup>1</sup> The record indicates that the applicant's spouse was born on December 26, 1937 and is seventy-one years old.

The favorable factors in the present case are the applicant's extensive family ties to the United States; extreme hardship to her U.S. citizen spouse if she were to be denied a waiver of inadmissibility; the applicant's lack of a criminal record, and, as indicated by statements from her family, the applicant's attributes as a good mother and spouse.

The AAO finds that the immigration violations committed by the applicant 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.