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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: NOV 27 2009

IN RE: [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 PETITIONER:

[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and 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 under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated January 5, 2007.

On appeal counsel for the applicant asserts that the applicant's wife is suffering extreme hardship since relocating to Mexico to reside with the applicant in 2007. The applicant's wife states that she moved to Mexico because she could not bear to live without the applicant but does not wish to live or raise the child she is expecting in Mexico. *Affidavit of* [redacted] dated October 29, 2009. The applicant's wife further states that she is suffering financial and emotional hardship since relocating to Mexico and fears that she or her child could be kidnapped due to the increasing rate of kidnapping and violent crime where they live in Mexico. *Affidavit of* [redacted] dated October 29, 2009. She further states that her pregnancy is considered high-risk because she had endometriosis and she plans to travel to the United States for the birth of the child and hopes she will not suffer any complication before her anticipated return date. She states that she fears she will suffer from severe depression once she leaves the applicant and feels that raising her child in unsafe conditions in Mexico or without a father in the United States are both unbearable choices for her. *Affidavit of* [redacted] dated October 29, 2009. In support of the appeal counsel submitted an affidavit from the applicant's wife, photographs of the applicant and his family, a letter of resignation from the applicant's wife stating that she was moving out of the country, information on conditions in Mexico, letters from the applicant's wife's doctors and other medical records, information on high risk pregnancies, bank statements and other financial documents, and information on child development and children from single-parent families. The entire record was reviewed and considered in arriving at 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 –
>
> > (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 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included 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. *Id.* at 566. The BIA has further stated:

> 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 has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For

example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS, supra,* the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a twenty-eight year-old native and citizen of Mexico who initially entered the United States without inspection in January 2000 and remained until March 2006, when he returned to Mexico. 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. The record further reflects that the applicant's wife is a thirty year-old native and citizen of the United States whom he married on October 1, 2004. The applicant and his wife currently reside in Uriangato, Guanajuato, Mexico.

Counsel asserts that the applicant's wife is suffering extreme hardship because she is at risk of being kidnapped in Mexico, is facing a high-risk pregnancy without access to adequate medical care in Mexico, and is separated from her family in the United States, where she resided her entire life until 2007. ***See Counsel's Statement in Support of Appeal.*** **In support of these assertions, counsel** submitted an affidavit from the applicant's wife and information on conditions in Mexico. The applicant's wife states that she is living in Mexico with the applicant in his parents' home and her pregnancy was diagnosed as high-risk because she has endometriosis. *Affidavit of* [redacted] dated October 29, 2009. The applicant's wife further states that she and the applicant live in a small room in his parents' house and must use their savings because there is only limited work at his parents' small clothing company, and further claims that they have spent much of their savings of $57,000 since she moved to Mexico. *Affidavit of* [redacted] The applicant's wife further states that after the money she and the applicant have spent from their savings during the past two years for everyday costs as well as fertility treatments, they will be "close to penniless," and she would be unlikely to find a job comparable to the job she left in the United States.

The applicant's wife additionally states that she fears she will not have the medical care she needs in Mexico and hopes that her planned return to the United States for the birth of her child in early 2010 will be soon enough to avoid any serious complications that would require immediate medical care Further, she states that there have been some violent kidnappings during the past year in the city where she lives, and she fears that she and her child will be targets for kidnappers because they are U.S. Citizens. She states,

> Fear of kidnappers and the fear of inadvertently being caught in the random outbursts of violence between warring drug cartels, as increasingly common as kidnappings, have rendered me near a states of paralysis. Uriangato, the sister city to Moreleon, is

one of the municipalities where organized crime has committed murders. *Affidavit of*

Documentation on the record indicates that violence in Mexico is increasing and U.S. Citizens have been targeted for kidnapping. The U.S. Department of State recently issued a Travel Alert for Mexico. The Travel Alert states:

> While millions of U.S. citizens safely visit Mexico each year (including tens of thousands who cross the land border every day for study, tourism or business), violence in the country has increased. It is imperative that travelers understand the risks of travel to Mexico, how best to avoid dangerous situations, and who to contact if one becomes a crime victim. Common-sense precautions such as visiting only legitimate business and tourist areas during daylight hours, and avoiding areas where prostitution and drug dealing might occur, can help ensure that travel to Mexico is safe and enjoyable.
>
> Recent violent attacks have caused the U.S. Embassy to urge U.S. citizens to delay unnecessary travel to parts of Michoacán and Chihuahua (see details below) and advise U.S. citizens residing or traveling in those areas to exercise extreme caution. . . .
>
> Although the greatest increase in violence has occurred on the Mexican side of the U.S. border, U.S. citizens traveling throughout Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times. Bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. In recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved. . . .
>
> U.S. citizens should make every attempt to travel on main roads during daylight hours, particularly the toll ("cuota") roads, which generally are more secure. When warranted, the U.S. Embassy and consulates advise their employees as well as private U.S. citizens to avoid certain areas, abstain from driving on certain roads because of dangerous conditions or criminal activity, or recommend driving during daylight hours only. When this happens, the Embassy or the affected consulate will alert the local U.S. citizen Warden network and post the information on their respective websites, indicating the nature of the concern and the expected time period for which the restriction will remain in place.
>
> U.S. citizen visitors are encouraged to stay in the well-known tourist areas. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Alert,* dated August 20, 2009.

The record also contains information on the rise in violent crime and kidnappings in Mexico, including the area of Guanajuato where the applicant and his wife reside, which would also contribute to the emotional hardship the applicant's wife is experiencing. The applicant's wife has stated that she lives in fear and seldom leaves the house due to fear of kidnappings, and fears for the safety of her child if they stay in Mexico. Further, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letters from the applicant's wife's doctors and the information on medical care in Mexico and potential complications due to endometriosis indicate that the applicant's wife could experience serious complications related to her pregnancy for which she would have less access to adequate care if she remained in Mexico. The record further indicates that the applicant's wife was employed in the United States and she and the applicant had accrued significant savings while residing in the United States, but are depleting these funds due to limited employment opportunities in Mexico. It appears that relocating to Mexico had caused and would continue to cause the applicant's wife emotional distress as well as financial hardship due to conditions in Mexico, loss of her employment and medical insurance benefits in the United States, separation from her family, and the hardship of adjusting to life in Mexico after residing in the United States her entire life. When considered in the aggregate, these hardships rise to the level of extreme hardship.

Counsel further asserts that the applicant's wife would suffer financial and emotional hardship if she remained in the United States without the applicant after the baby is born due to separation from the applicant and loss of his income. *See Counsel's Statement in Support of Appeal.* In her affidavit the applicant's wife states,

> I moved to Mexico not because I want to live in Mexico or raise my child in Mexico; I moved to Mexico because I cannot bear to be without my husband, [redacted] I moved there when his I-601 was denied. *Affidavit of* [redacted] dated October 29, 2009.

The applicant's wife states that she was very sad when the waiver application was denied and consulted a doctor for depression and was prescribed anti-depressant medication. She further states,

> I decided, however, after much anguished thought, that I did not want to rely on mood-altering medications as an antidote to the profound loss I felt at [redacted] absence. The only viable solution to alleviating the deep depression I was feeling would be to move to Mexico to be with [redacted] . . . I realized at the time that seismic changes would occur in my life as a result of this move, but I saw no other choice. *Affidavit of* [redacted] dated October 29, 2009.

A letter from the applicant's wife's doctor states that she was suffering from depression before departing the United States and had been taking the prescription drug Lexapro for the condition. *See Letter from* [redacted]., dated January 12, 2007. A letter from the applicant's father-in-law submitted with the appeal states that the applicant's wife had moved back in with her parents after the applicant departed because she was "so depressed being in the apartment on her own," and

that they regularly heard her crying, but discouraged her from going to Mexico because she would lose her job and would not have good opportunities there. *Letter from* [redacted] dated January 18, 2007.

When considered in the aggregate, the factors of hardship to the applicant's wife should she remain in the United States constitute extreme hardship. The applicant's wife was suffering from depression and was prescribed medication for the condition, and decided to relocate to Mexico because of the emotional hardship she was experiencing. Her decision to relocate was made despite the need to leave her job and family in the United States, and she has remained in Mexico despite financial hardship and fears resulting from the rising crime rate. It appears that in light of her psychological condition, the applicant's wife would be at risk of depression if she remained in the United States without the applicant, and this psychological hardship, when combined with the financial hardship of supporting herself and their child without the applicant's income, would amount to hardship to the applicant's wife that is unusual or beyond that which would normally be expected as a result of inadmissibility or removal from the United States.

The AAO additionally finds that the applicant merits 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 section 212(a)(9)(B)(v) 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 the 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 "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 adverse factors in the present case are the applicant's immigration violations, including entry without inspection and remaining in the United States without authorization from January 2000 to March 2006.

The favorable factors in the present case are the extreme hardship to the applicant's wife, the applicant's previous employment in the United States and his history of filing income tax returns, his lack of a criminal record, and letters in support of his application from relatives of his wife.

The AAO finds that applicant's violation of the immigration laws 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.