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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
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: OCT 13 2009

(CDJ 2004 800 759 relates)

IN RE:

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

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 "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that 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 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. The applicant is married to a U.S. citizen and 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 reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated January 12, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on April 21, 2001; three letters from [REDACTED] a letter from [REDACTED] employer; a letter from [REDACTED] physician; letters from the couple's sons' physicians; several letters of support; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the district director found, and the applicant does not contest, that the applicant entered the United States without inspection in November 1997 and remained until January 2006. Therefore, the applicant accrued unlawful presence of over eight years. He now seeks admission within ten years of his 2006 departure. Accordingly, he is 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 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).

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. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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. The BIA has held:

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 Court of Appeals for the Ninth Circuit has held that “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.” *See 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) (“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s wife, _____ states that she has a son, _____ from a previous relationship and that the applicant has raised her son as a father since her son was three years old. _____ states that _____ has attention deficit disorder and exercise induced asthma. _____ states that the couple **have a son together**, _____ and that he also suffers from asthma, using an inhaler on a daily basis. She contends that before her husband left the country, she and the applicant worked separate shifts because they could not afford day care. In addition, _____ states that since the applicant departed the United States, she has been depressed, cries a lot at night, and suffers from anxiety attacks. She also contends her blood pressure has increased since her husband’s departure and that she has been demoted from her job because she is unable to focus on work. _____ claims she has been struggling to pay her bills and that bill collectors call her all the time, threatening to take her to court. She also claims her landlord wants to evict her because her rent payments are always late. Furthermore, _____ states she cannot move to Mexico to be with her husband because of her sons’ medical needs. She claims her sons do not speak Spanish and that they have no relatives in Mexico. *Letters from* _____ dated February 1, 2007, January 16, 2006, and January 13, 2006.

A letter from _____ former case manager states that in April 2006, _____ became a participant in a program designed to prevent homelessness and to assist families in stabilizing their lives. The case manager states that _____ “simply did not have enough funds coming in to cover the expenses,” and that the program was able to help pay her water and electric bills, purchase her gas, renew her “auto license plates,” and pay for prescription medications. The case manager states _____ has been able to continue working because of a child care center that permits her to pay a “very partial payment each month.” The case manager observed that _____ was “fighting depression and having anxiety attacks.” *Letter from* _____ dated February 6, 2007; *see also Letter from* _____, dated February 6, 2007 (stating that _____ has become a member of her church’s support program).

A letter from _____ current case manager states that _____ has become very lonely since her husband departed the country and states that it has been difficult communicating with her husband by phone because her husband does not have access to a phone in his rural village in Mexico. The case manager states _____ was demoted from being a line supervisor to a line worker because of her inability to juggle the emotional and financial strain her husband’s departure has put on her. She further contends _____ housing is in jeopardy because her rent has become past due and states that her utilities and phone bills have been increasing. *Letter from* _____, dated February 5, 2007.

A letter from _____ employer states that “[u]p until a year ago, _____ was a top performer at work.” _____ employer states that _____ has been a single parent and has “missed a great deal of work and has not always had her mind on her job.” Her employer contends they have tried to accommodate _____ given her situation, but that she was demoted in December 2006. _____ employer concludes that they “are concerned that without some resolution in her personal issues, _____

performance will end up costing her to lose her job.” *Letter from* [REDACTED] dated January 29, 2007

A letter from [REDACTED] physician states that “[s]ince her husband left the country, she has suffered a tremendous amount of anxiety and depression. . . . She has had numerous doctor visits and testing as well as emergency room visits due to somatic complaints that resulted from the underlying stress and anxiety of the loss of her husband.” [REDACTED] physician further states that on March 28, 2006, approximately six weeks after the applicant’s departure, [REDACTED] was transported to the emergency room. Her physician states that she was seen again on July 12, 2006, December 29, 2006, January 25, 2007, and January 29, 2007, for anxiety, panic attacks, and chest pains, problems she never experienced prior to her husband leaving the country. In addition, [REDACTED] physician states that [REDACTED] blood pressure has been elevated due to the severe anxiety she is suffering and that she is on prescription medication, but contends that she is still suffering. *Letter from* [REDACTED] dated February 2, 2007.

A letter from [REDACTED] physician states that [REDACTED] suffers from asthma and that he has had several exacerbations in the recent past. A letter from [REDACTED] physician states that [REDACTED] has “multiple medical problems including depression, attention deficit disorder and exercise induced asthma.” [REDACTED] physician states that [REDACTED] depression and behavior issues have declined since his father left the country. *Letters from* [REDACTED], both dated January 25, 2007

Upon a complete review of the record evidence, the AAO finds that [REDACTED] has suffered, and will continue to suffer, extreme hardship if the applicant’s waiver application were denied. The record shows that [REDACTED] is suffering from depression, anxiety, panic attacks, and chest pains, and that her blood pressure has been elevated, as a result of the applicant’s departure from the United States. According to [REDACTED] physician, she has never experienced these symptoms before her husband left the country and even though she is on prescription medication, she continues to suffer. *Letter from* [REDACTED] *supra*. In addition, the record shows that [REDACTED] has been so distraught with her husband’s departure that she has been demoted from work, going from a “top performer” as a supervisor to a line worker who, according to [REDACTED]’s employer, may lose her job altogether if she is unable to resolve her “personal issues.” *Letter from* [REDACTED] *supra*; *Letter from* [REDACTED] *supra*. Furthermore, the record indicates that the couple’s son, [REDACTED] has become more depressed and that he has developed behavior issues since his father’s departure. *Letter from* [REDACTED] *supra*. Moreover, the record shows that [REDACTED] has suffered extreme financial hardship since the applicant’s departure. She has had to put her children in day care, an expense she and the applicant could not afford when the applicant was living in the United States, and is able to do so only because the day care center allows her to pay a portion of the expenses. [REDACTED] has had to reach out for assistance to prevent her family from becoming homeless and has had to rely on a case management service to pay for her water and electric bills, gas, and prescriptions. *Letter from* [REDACTED] *supra*; *Letter from* [REDACTED] *supra*. Considering these factors cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

Moreover, moving to Mexico to avoid separation would be an extreme hardship for [REDACTED]. The record shows that [REDACTED] was born in the United States and would need to adjust to a life in Mexico after having lived in the United States her entire life, a difficult situation made even more complicated given her two U.S. citizen sons do not speak Spanish. In addition, the record shows that [REDACTED] sons have medical and mental health issues including depression, attention deficit disorder and asthma, and moving to Mexico would disrupt the continuity of health care they receive. In sum, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful entry and presence in the United States. The favorable and mitigating factors in the present case include: significant family ties in the United States, including his U.S. citizen wife and two U.S. citizen sons; the extreme hardship to the applicant's wife if he were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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.