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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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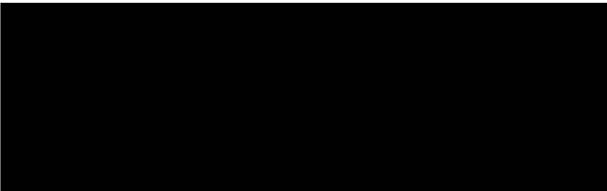
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: OCT 30 2009
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IN RE: [REDACTED]

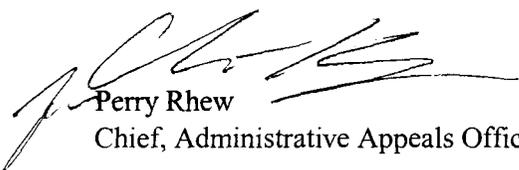
APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(a)(9)(B)(v) of
the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

The record reflects that the applicant is a 35-year-old 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. The applicant is married to a U.S. citizen, and he seeks a waiver of inadmissibility under 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 in the United States.

The District Director found that the applicant failed to establish extreme hardship to his citizen spouse, and denied the application accordingly. *Decision of the District Director*, dated October 6, 2006. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on his wife. *See Form I-290B, Notice of Appeal*, dated October 21, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on October 24, 2003, in California; declarations from the applicant, his wife, and various family members; letters from the applicant's wife; a psychological report regarding the applicant's wife; invoices for counseling services; medical records and prescriptions for the applicant's wife; California State Disability Insurance Forms; information on economic conditions and human rights in Mexico; photographs of the applicant's residence in Mexico; and a brief in support of the appeal.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). The entire record was considered in rendering a decision on the appeal.

Section 212(a)(9) 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 [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.

8 U.S.C. § 1182(a)(9)(B). The record shows that the applicant entered the United States without being inspected and admitted on or around January 14, 1992. *See Form I-601, Application for Waiver of Ground of Excludability; Declaration of [REDACTED]* at ¶ 3. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on December 10, 2003, and U.S. Citizenship and Immigration Services approved the petition on July 16, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in November, 2005. *See Form I-601, supra*. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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

¹ The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that the applicant’s spouse has established that the denial of a waiver imposes an extreme hardship on her if she remains in the United States without her husband, or if she relocates to Mexico to be with her husband.

The record shows that the applicant’s wife has suffered extreme psychological hardship as a result of the separation from the applicant. Specifically, [REDACTED] states that she began to suffer daily panic attacks, depression, lack of energy, weight loss, and other conditions after the waiver application was denied. *Declaration of [REDACTED] Report*. A marriage and family therapist diagnosed [REDACTED] with major depressive disorder, single episode; generalized anxiety disorder; and panic attacks, caused by the separation from her husband. *See Psychological*

Report. The therapist recommended “a medication evaluation by a psychiatrist to determine if antidepressants might be helpful in reducing her symptomatology, [and] psychological treatment with her current therapist at Catholic Charities, to assist her in developing coping skills to deal with the stressors in a more effective manner.” *Id.* The record contains copies of receipts for medications for depression and anxiety that were prescribed to the applicant’s wife. *See Prescription Medication Receipts*. [REDACTED] also attended twice weekly psychotherapy sessions at Catholic Charities. *See Letter from Marriage and Family Therapist Intern [REDACTED] Billing Invoices for Catholic Counseling Services*. [REDACTED] medical records also confirm her symptomatology and treatment for depression. *See Progress Records*. Further, the record reflects that the applicant sought disability insurance benefits due to her condition. *See Claim for Disability Insurance Benefits – Doctor’s Certificate* (including diagnosis of depression and anxiety disorder, and treatment by anti-depressants and psychotherapy).

As a result of the applicant’s wife’s depression, she dropped her college classes due to “lack of concentration” and “failing grades.” *Progress Records*. Additionally, [REDACTED] states that her depression has caused her to “lose four different jobs because [she] feel[s] sick and depressed all the time and [she has] had to take too much time off.” *Declaration of [REDACTED]* [REDACTED] mother confirms that her daughter was unable to work because of depression, and that [REDACTED] moved in with her mother because she could not afford to live on her own. *See Declaration of [REDACTED]* [REDACTED] family members corroborate [REDACTED] extreme emotional response to the separation from the applicant. *See id.*; *see also Declaration of [REDACTED]* (brother); *Declaration of [REDACTED]* (sister-in-law).

In sum, the applicant’s spouse has provided evidentiary support for her contention that she faces extreme psychological hardship without the presence of her husband in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation).

The applicant’s spouse also has provided evidence that she would suffer extreme hardship if she were to relocate to Mexico to live with her husband. First, the applicant’s wife’s family, including **her lawful permanent resident mother and brother reside in the United States**. *See Declaration of [REDACTED]*; *Declaration of [REDACTED]*; *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of the presence of family ties to U.S. citizens or lawful permanent residents in the United States).

Second, the record contains evidence of the very poor living conditions where the applicant and [REDACTED] would live in Mexico. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of country conditions where the qualifying relative would relocate). Specifically, the applicant describes his residence, which used to belong to his father, as “basically a shack where holes in the wall have been patched with cardboard in an attempt to keep out the wind and there is not running water, you have to go outside to wash anything or use the bathroom.” *Declaration of [REDACTED]* *see also photographs of residence*. [REDACTED] claims that she could not

live there because it is “drafty and cold with only the bare necessities,” and she became “so depressed after being there a few days.” *Declaration of* [REDACTED]

Third, the record contains evidence that the financial impact of departure would cause extreme financial hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of the financial impact of departure). The applicant states that he resides in a small town with limited jobs and housing, and he has not been able to find a decent job in Mexico. *Declaration of* [REDACTED] *see also Article on Mexico’s Minimum Salary, the most deteriorated in Latin America*. Further, country conditions information in the record indicates that the Mexican “minimum wage did not provide a decent standard of living for a worker and family, and only a small fraction of the workers in the formal workforce received the minimum wage.” *U.S. Department of State, Country Reports on Human Rights Practices in Mexico*.

Fourth, as described above, [REDACTED] has faced significant mental health conditions, for which she has been able to access low-cost care in the United States and the record reflects the diminished availability of such medical care in Mexico. *U.S. Department of State, Country Reports on Human Rights Practices in Mexico* (noting that “no more than 25 percent of those with a mental illness received adequate treatment”). *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of significant health conditions, particularly where there is diminished availability of medical care). Finally, although [REDACTED] was born in Mexico, she has resided in the United States since 1992, and she has been a citizen of the United States since 2003. *See Declaration of* [REDACTED] *Certificate of Naturalization*. Although not all the relevant factors in this case are extreme in themselves, the entire range of factors considered in the aggregate takes the case beyond those hardships ordinarily associated with deportation or inadmissibility, and supports a finding of extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

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 Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). The adverse factors in this case are the unlawful presence for which the applicant seeks a waiver. The favorable and mitigating factors in this case include: the applicant’s significant ties to his U.S. citizen spouse in the United States; the applicant’s lack of a criminal record; the applicant’s educational record in the United States; and the extreme hardship to the applicant and his spouse, if he were denied a waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that although the immigration violation committed by the applicant is serious, 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.