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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ)  
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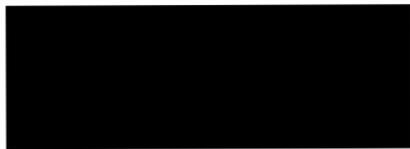
Date: SEP 02 2009

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:



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. 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. § 212(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 October 30, 2006.

On appeal, counsel contends that the district director erred in concluding the applicant failed to establish extreme hardship.

The record contains, *inter alia*: a letter and an affidavit from the applicant's wife, [REDACTED]; copies of the birth certificates of the couple's two U.S. citizen daughters; a letter from [REDACTED] physician; letters from [REDACTED] parents; letters from [REDACTED] parents' physicians; numerous letters of support; a letter from the couple's child's physician; copies of bills; a copy of the U.S. Department of State 2005 Country Reports on Human Rights Practices for Mexico and other background materials on conditions in Mexico; 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 counsel does not contest, that the applicant unlawfully entered the United States in May 2000 and remained until January 2004. Therefore, the applicant accrued unlawful presence of over three years. He now seeks admission within ten years of his 2004 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 Board of Immigration Appeals 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, [REDACTED], states that she has a daughter, [REDACTED], from a previous relationship. [REDACTED] states that [REDACTED] father committed suicide and that she underwent a lot of stress and depression trying to figure out why he did it. She contends that his family blames her for his death. [REDACTED] claims that since the beginning of her relationship with the applicant, the applicant has raised [REDACTED] who was four years old at the time, like his own child. [REDACTED] states that she gave birth to the couple’s daughter, [REDACTED] in 2002. According to [REDACTED], since her husband’s departure in 2005, she has been in a “constant state . . . of depression and anxiety,” and she states that both of her daughters have had significant changes for the worse. [REDACTED] states that [REDACTED] has become very aggressive toward other children and gets mad when other children talk about their fathers. [REDACTED] states that [REDACTED] temper is out of control, she screams and kicks, does not sleep well, and is constantly asking for her father. [REDACTED] contends that [REDACTED] has become quiet, negative, and “has no belief in anything anymore.” In addition, [REDACTED] states that shortly after the applicant departed the United States, her brother was diagnosed with cancer and died in January 2006. [REDACTED] states that “part of [her] died as well,” and that her daughters lost yet another father figure from their lives. She states she missed her brother’s funeral in order to go to Mexico to attend her husband’s consular interview with him. Furthermore, [REDACTED] contends she is the primary care giver of her elderly parents, who are currently 73 and 75 years old. [REDACTED] contends she could not move to Mexico to be with her husband because she cannot leave her parents. She states her mother went through a deep depression after her brother died and claims that her mother “could not function on her own without me [REDACTED] living close by.” [REDACTED] states that her father has a heart condition and poor eyesight, so he cannot drive. She states she drives her parents to medical appointments and translates for them. [REDACTED] claims she cannot function well anymore, struggles to get to work, and has lost and then gained a lot of weight. She further states that she has been struggling to pay the mortgage and bills every month since her husband departed the country. She states her daughter’s health insurance premiums are going to increase dramatically and that they face being “cut-off” from health insurance. *Affidavit from [REDACTED]*, dated November 22, 2006; *Letter from [REDACTED]* dated January 27, 2006.

[REDACTED]’s father states that he has “heart problems and other health problems.” He states that he relies on his daughter “one hundred percent,” as she takes him to doctor’s appointments where she translates for him, checks his blood pressure, runs errands, and does paperwork for him. He states [REDACTED] lives two blocks away from his house and has never lived far away from him. He states that he and his wife take care of [REDACTED] so that [REDACTED] does not have to pay child care expenses. *Letter from [REDACTED]*, dated November 9, 2006.

mother states that she “suffer[s] from various illnesses [and has] been suffering from depression for several months now, due to the death of [her] son. . . .” mother states that she is terrified of the possibility that her daughter may have to move to Mexico to be with the applicant and “cannot imagine losing another child.” mother states that her daughter takes her to doctor’s appointments, translates for her, and depends on her “for everything.” She states she “needs [her daughter’s] help for everything[, as] she is the one that I can count on.” mother states her daughter was born in the United States, has lived in the United States her entire life, and “does not know anything about Mexico or how life is in Mexico.” mother claims her daughter would be taken advantage of in Mexico. mother further claims that it would be impossible for her daughter to find work in Mexico because of the high unemployment rate, the fact that people in Mexico prefer to hire local people, and “Spanish is not very high [sic] sufficient [to] work in Mexico.” mother contends her granddaughters would be laughed at and risk being kidnapped in Mexico. She further states that she and her husband take care of and pick up after school. She contends attitude has changed since her father departed the United States and that she “looks nervous, and screams and [is] difficult . . . to manage.” mother describes as a desperate child. *Letter from* dated November 10, 2006.

A letter from physician states that “is suffering from major clinical depression, moderately severe to severe,” and that she has “experienced progressive problems with sleep, depressive symptoms, weight changes, irritability, disorganization, tearfulness, hopelessness, and appetite changes.” *Letter from* dated November 7, 2006.

A letter from father’s physician states that he is being treated for cardiomyopathy, Barrett’s Esophagus and essential tremor. The doctor states father “is receiving and requires on-going medical care,” and that he “needs chronic medical care.” *Letter from*, dated November 8, 2006.

A letter from mother’s physician lists the following medical problems that mother has:

- Osteoarthritis of knee
- Hypertension
- Hyperlipidemia
- Depression, major, single episode
- Chronic pain syndrome
- Gerd
- Screening for CA, colon
- Health check up, adult
- Insomnia

The letter lists eight medications for mother. *Letter from*, dated November 7, 2006.

A letter from [REDACTED] physician states that since the applicant departed the United States, [REDACTED] “has demonstrated behavioral issues including temper issues and sleep difficulties.” *Letter from [REDACTED] dated November 9, 2006.*

Numerous letters of support in the record describe [REDACTED] high stress level and the children’s behavior problems and depression. *See, e.g., Letter from [REDACTED] dated November 10, 2006* (stating [REDACTED] arrives at work later than usual in the mornings because she no longer has her husband to help get her daughters ready in the mornings and that [REDACTED] no longer plays with other kids); *Letter from [REDACTED] dated November 8, 2006* (stating [REDACTED] is struggling to raise two children as a single parent and that the children are also struggling without their father); *Letter from [REDACTED] undated* (stating [REDACTED] “is constantly experiencing fatigue and anxiety about the bills . . . and her daughters’ states of mind”); *Letter from [REDACTED] dated November 8, 2006* (stating [REDACTED] has “change[d] a lot,” talks about her dad in every conversation, and gets jealous and fights with another child when that child mentions her own father); *Letter from [REDACTED] dated November 9, 2006* (stating she noticed “drastic changes in [REDACTED],” who has become very difficult and no longer listens like she did before); *Letter from [REDACTED], dated November 9, 2006* teacher states [REDACTED] work is “not as good as it usually is,” that she isn’t trying as hard in class, and is much quieter than usual).

Upon a complete review of the record evidence, the AAO finds that the applicant has established is wife has suffered, and will continue to suffer, extreme hardship if his waiver application is denied.

In this case, 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 a major and severe clinical depression for which she is medicated. The record indicates she has endured several tragic events. First, [REDACTED]’s older daughter’s father committed suicide, causing her a significant amount of stress and depression, particularly considering friends and family blamed her for his death. Second, the record shows that since the applicant’s departure from the United States, [REDACTED] brother died from cancer and she was unable to attend his funeral because she was in Mexico for the applicant’s consular interview. Third, the record indicates that both of [REDACTED] daughters have developed serious behavior problems since the applicant departed the United States. Fourth, it is evident from the record that [REDACTED] is very close with her parents, both of whom are elderly and have a variety of health conditions, and both of whom recently lost their son, [REDACTED] brother. The letter from [REDACTED] father’s doctor specifically states that he requires “on-going medical care” and “chronic medical care.” *Letter from [REDACTED], supra.* Considering these unique 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, has never lived in Mexico, and has never lived far away from her parents who are totally dependent on her. [REDACTED] 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 mental health and considering the trauma she has experienced in the past including her daughter's father's suicide and her brother's recent death. In addition, relocating to Mexico would severely disrupt her two U.S. citizen daughters' lives considering they have never lived in Mexico and have exhibited behavioral problems that their caretakers and teachers are attempting to address. Furthermore, the record includes documentation on country conditions in Mexico and the AAO notes that the most recent U.S. Department of State Travel Alert for Mexico states that "violence in the country has increased" and "urge[s] U.S. citizens to delay unnecessary travel" to certain areas in Mexico. *U.S. Department of State Security Travel Alert for Mexico*, dated August 20, 2009. 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: the extreme hardship to the applicant's wife if he were refused admission; significant family ties in the United States including his U.S. citizen wife and two U.S. citizen daughters; 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained. The application will be approved.

**ORDER:** The appeal is sustained.