

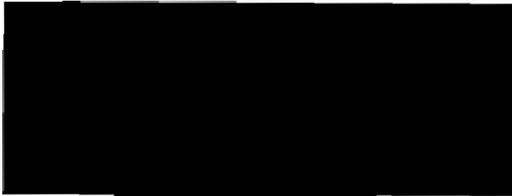
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services



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FILE: [Redacted]  
(CDJ 2004 362 195 relates)

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: SEP 17 2009

IN RE: Applicant: [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 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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in August 2000 and did not depart the United States until April 2005. The applicant was thus 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 does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2006.

In support of the appeal, the applicant's representative submits the following, *inter alia*: a letter, dated September 26, 2006; a letter from the applicant's spouse, dated September 26, 2006; evidence of the applicant's spouse's lawful permanent resident status; letters on behalf of the applicant from friends and family; verification of the applicant's past employment in the United States; financial documentation; medical documentation pertaining to the applicant, his spouse and his grandchildren; and photographs of the applicant and his family. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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...

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's lawful permanent resident spouse is the only qualifying relative, and hardship to the applicant, their children and/or their grandchildren cannot be considered, except as it may affect the applicant's spouse.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant's spouse asserts that she will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that she would suffer extreme emotional hardship due to the long and close relationship she has with her husband; she notes that they have been married for over 40 years. She further notes that her husband is suffering from diabetes and needs medication, but in Mexico, he is unable to qualify for care and such concerns are causing her hardship. She asserts that she is suffering from numerous health issues, including high blood pressure, an ulcer, nervous tension, headaches, fatigue, and sleeplessness, owing to the separation from her husband. Documentation of the applicant's and his spouse's medical problems has been submitted. In addition, the applicant's spouse asserts that she is unable to work due to numerous medical conditions and is now dependent on her adult child to support her since the applicant is residing in Mexico; such financial reliance on her daughter is causing the applicant's

spouse extreme hardship.<sup>1</sup> She concludes that “now at my age, after we have fought so hard for 41 years of marriage, I didn’t think that I would be suffering like this with my family separated...” *Statement from* [REDACTED] dated September 7, 2006.

The record establishes that the applicant and his spouse have been married since 1966, but started living apart in 1974, when the applicant relocated to the United States to obtain gainful employment while his spouse remained in Mexico; they were reunited in the United States 25 years later. Since the applicant’s relocation to Mexico in 2005 due to his inadmissibility, the applicant’s spouse has been experiencing medical and mental health problems. Moreover, as the applicant’s spouse asserts, and country condition reports corroborate, it would be difficult for the applicant to find gainful employment in Mexico, thereby causing financial hardship to his spouse in the United States, who is unable to work and is currently dependent on her children to support her. *See U.S. Department of State Profile-Mexico*, dated May 2009. Thus, based on a thorough review of the record, the AAO concludes that were the applicant unable to reside in the United States, the applicant’s spouse would suffer extreme hardship. The applicant’s spouse needs the support that the applicant provides on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant’s waiver request. The applicant’s spouse contends that were she to relocate abroad to reside with the applicant, she would lose her right to live in the United States by abandoning her lawful permanent resident status by not residing in the United States. *Supra* at 3. In addition, she notes that she would suffer emotional hardship due to the long and close relationship she has with her five adult children and multiple grandchildren, all residing in the United States. Based on the applicant’s spouse’s potential loss of her lawful permanent resident status and the long-term separation from her children and grandchildren, the AAO finds that the applicant’s spouse would experience extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant’s lawful permanent resident spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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).

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<sup>1</sup> A letter has been provided by the applicant’s spouse’s treating physician, [REDACTED], Dr. [REDACTED], confirms that the applicant’s spouse “can’t do heavy labor...” *Letter and Translation from* [REDACTED] *Institute of Recuperation International of Health.*

In evaluating whether . . . 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-Morales*, 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 favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident spouse and U.S. citizen children and grandchildren would face if the applicant were to reside in Mexico due to his inadmissibility, community ties, support letters from the family and from the community, gainful employment in the United States, payment of taxes and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's initial entry without inspection, his unlawful presence and unauthorized employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The district director shall continue to process the immigrant visa application on its merits.