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Citizenship and Immigration Services
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FILE: Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: SEP 25 2009
CDJ 2004 824 339

IN RE:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 record reflects that the applicant is a 28-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 citizen of the United States, 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 and child in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director.* On appeal, the applicant contends that the denial of the waiver imposes extreme hardship on his wife. *See Form I-290B, Notice of Appeal; Letters from* [REDACTED]

The record contains, among other things, multiple letters from the applicant's wife; a copy of the birth certificate for the couple's daughter; medical records for the applicant's wife and daughter; letters from the applicant's wife's doctors and licensed clinical social worker; employer letters; and financial records. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9)(B) of the Act provides:

(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 in or around May, 2000. *See Form I-601, Application for Waiver of Ground of Excludability; Decision of the District Director, supra.* The applicant's spouse filed a Petition for Alien Relative (Form I-130) on September 4, 2003, and USCIS approved the petition on June 29, 2004. *See Form I-130, Petition for Alien Relative.* The applicant departed the United States in February, 2006. *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

The record reflects that the applicant pleaded guilty to the following three California Vehicle Code violations on March 1, 2001: (1) driving without a license, in violation of section 12500a of the California Vehicle Code; (2) driving without evidence of financial responsibility, in violation of section 16028a of the California Vehicle Code; and (3) displaying false registration, in violation of section 4462.5 of the California Vehicle Code. *See Proceedings Disposition Notice.* The applicant was ordered to pay a fine of \$775.00. *Id.* The District Director implied that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for failing to disclose these violations to the U.S. Consular Officer. *See Decision of the District Director, supra* at 2-3. Because the record indicates that the visa denial was based on the applicant's unlawful presence, and the record contains insufficient evidence to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, the AAO rejects the applicability of the misrepresentation ground of inadmissibility. Additionally, none of these vehicular violations constitute crimes involving moral turpitude. *See, e.g., Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) (stating that a moral turpitude finding generally requires "conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general"). If the applicant had revealed these convictions in the consular interview he would not have been found inadmissible for conviction of a CIMT, therefore his omission is not material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, 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). 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

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).

affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. 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).

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. 560, 565 (BIA 1999). 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 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) (per curiam) ("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 Act 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 record reflects that the applicant's spouse is a 28-year-old native of Mexico and citizen of the United States. Although the record lacks a copy of the couple's marriage certificate, it appears that the applicant and his wife have been married for seven years. *See Form I-130*. The couple's daughter was born in 2002. *See Birth Certificate for [REDACTED]*. The applicant's spouse asserts that she is suffering extreme medical, emotional, and financial hardships as a result of the separation from the applicant.

In support of the hardship claims, the applicant's wife indicates that she has experienced a serious medical condition that has jeopardized her life. *See Letter from [REDACTED]*, dated May 12, 2008. Specifically, after sinus surgery in March 2008, [REDACTED] suffered two incidents of severe hemorrhaging, resulting in hospitalization and blood transfusions. *Id.* This medical condition has impacted her ability to work, to care for her daughter, and to participate in daily activities. *Id.* Additionally, [REDACTED] states that her medical condition has resulted in panic attacks, and has worsened the depression she suffers as a result of the separation from the applicant. *Id.* [REDACTED] also claims emotional hardship based on the impact of the separation on her daughter. *See Letter from [REDACTED]*, dated May 7, 2007. Although Mrs. [REDACTED] mother resides in the United States, she is not able to care for [REDACTED] or her daughter because she is caring for a son with special needs. *Id.* Finally, [REDACTED] contends that without the applicant's income, she does not earn enough to meet her financial responsibilities. *See Letter from [REDACTED]* dated Feb. 7, 2006.

The documentary evidence in the record corroborates [REDACTED] serious medical condition. Her attending physician stated that [REDACTED] "is seriously ill" and "is unable to work and is quite weakened by the situation." *Letters from [REDACTED]* dated Mar. 17 and 31, 2008. The medical records confirm [REDACTED] sinus surgery, and the emergency care provided during her hospitalization from March 13 – 21, 2008. *See Medical Records*. Regarding [REDACTED] psychological health, a Licensed Clinical Social Worker indicates that [REDACTED] has been "assessed and diagnosed with Major Depression and Posttraumatic Stress Disorder." *See Letter from [REDACTED]*, dated Apr. 15, 2008. The letter states that [REDACTED] "is unable to maintain employment due to the recent medical trauma," and that she is "struggling with daily functioning, and providing consistent parenting for her young daughter." *Id.* In 2006, the applicant's family practitioner indicated that the separation from the applicant "has caused significant stressors on" [REDACTED] and her daughter, and that the applicant's wife is "being treated for stress reaction, depression, cephalgia, and anhedonia." *See Letter from [REDACTED]*, dated Nov. 13, 2006. The medical records corroborate [REDACTED] continuing depression, and the need for medications to manage the condition. *See Medical Records*. [REDACTED] also indicates that she is attending group counseling classes for her depression. *See Letter from [REDACTED]*, dated May 12, 2008. Finally, [REDACTED] work supervisor noted "a considerable change in this once up beat young lady that always had a smile on her face to

someone who is withdrawn with now a somber hopeless look on her face.” *See Letter from* [REDACTED], dated Nov. 14, 2006.

[REDACTED]’s need for assistance is supported by documentation in the record. For instance, Mrs. [REDACTED]’s employer confirmed that she was placed on short term disability, and notes that her coworkers have attempted to assist her following her hospitalization. *See Letter from Charles River Laboratories*, dated Mar. 25, 2008. Additionally, the record contains documentary evidence to support [REDACTED]’s claim that her mother is not able to provide care for her and her daughter because she cares for a son with cerebral palsy and a number of other conditions. *See Psychological Summary for* [REDACTED] (noting that he is nonambulatory, non-verbal, and requires total care).

Although the record lacks documentation regarding the couple’s income, a letter from the applicant’s employer indicates that he was employed as a field foreman for a HVAC and sheet metal company. *See Letter from* [REDACTED] dated Jan. 16, 2006. The applicant’s wife claims that without the applicant’s income, she does not earn enough to cover the mortgage, car payments, insurance, and utility and phone bills, and she fears losing her house, car, “and everything that [they] both accomplished together.” *Letter from* [REDACTED], dated Feb. 7, 2006. Additionally, the record contains a copy of a grant deed for property in Hollister, California, a mortgage statement, and copies of several bills.

Based on the relevant evidence, the AAO concludes that the applicant has met his burden of showing that his wife faces extreme medical and psychological hardships based on family separation. The combination of [REDACTED]’s serious medical condition, her psychological difficulties, the challenges of raising a young daughter as a single parent without assistance, and the financial detriment, rise to the level of hardship that is beyond what would be expected as a result of family separation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of significant health conditions and family ties).

The applicant’s spouse also has provided evidence that she would suffer extreme hardship if she were to relocate to Mexico to live with the applicant. [REDACTED] states that the applicant left Mexico and came to the United States due to a life of extreme hardship in that country. *See Letter from* [REDACTED]. The applicant’s wife would be unwilling to move her daughter to Mexico due to the hardship faced by the applicant. *Id.* [REDACTED] has strong connections to the United States, where she has lived since 1997, and has been a citizen since 2003. Additionally, [REDACTED] has been a “valued employee” of Charles River Laboratories in Hollister, California, *see Letter from Charles River Laboratories, supra*, and her parents and two siblings reside in Hollister, *see Intake Social Assessment for* [REDACTED]. In addition to [REDACTED]’s serious medical condition, the record reflects that the applicant’s daughter has suffered from lengthy bouts of pneumonia and bronchitis, requiring treatment and follow up. *See Letter from* [REDACTED] *Medical Records for* [REDACTED].

The AAO determines that the aggregate impact of these factors would cause extreme hardship to the applicant’s wife if she relocated to Mexico with her daughter. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (noting the importance of family ties to U.S. citizens or lawful permanent residents in the United States, country conditions where the qualifying relative would relocate, and significant health conditions). Although the

relevant factors may not be extreme in themselves, the entire range of factors considered in the aggregate, takes the case beyond those hardships ordinarily associated with removal, such as economic detriment due to job loss or the efforts ordinarily required in relocation, 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, and his vehicle code violations in 2001. The favorable and mitigating factors in this case include: the applicant's significant ties to his U.S. citizen spouse and daughter in the United States; his favorable work history; and the extreme hardship to the applicant, the applicant's spouse, and the couple's daughter, if he were denied a waiver. *See Matter of Mendez-Moralez*, 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.