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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  
and Immigration  
Services



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FILE: [Redacted] Office: CIUDAD JUAREZ  
(CDJ 2004 810 386 relates)

Date: SEP 29 2009

IN RE: [Redacted]

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 Officer in Charge, Ciudad Juarez. 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 naturalized 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 2, 2007.

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

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on January 22, 2001; a letter from the applicant; a letter and an affidavit from [REDACTED]; a letter from [REDACTED] sister; a letter from [REDACTED] doctor; copies of the birth certificates of the couple's two U.S. citizen children; numerous copies of birth certificates and permanent resident cards of the couple's family members who reside in the United States; a letter from [REDACTED] employer; tax documents; a copy of the U.S. Department of State 2004 Country Reports on Human Rights Practices for Mexico; a copy of an immigration judge's order granting the applicant voluntary departure with an alternate removal order; documentation regarding the applicant's removal; 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 entered the United States in February 1994 without inspection and remained until his removal on September 3, 2004. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in September 2004. Therefore, the applicant accrued unlawful presence of over seven years. He now seeks admission within ten years of his September 2004 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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, [REDACTED] states that after the applicant was deported, their two U.S. citizen children cried very much, stopped eating, and became very depressed. [REDACTED] states that she could not bear the pain her children were going through and that she was not making enough money to support the entire family, so she was forced to leave her children in Mexico with their father. [REDACTED] states it was the most painful decision she has made in her entire life leaving her children with their father because they were depressed and because she did not have enough income for her to keep them on her own. [REDACTED] states that since the applicant departed the United States, they “lost [their] apartment, [their] car and everything [they] had. [They] had to get rid of all of [their] belongings and [they] only kept [their] clothes.” She states she lost the apartment because she did not have money to pay the rent and utility bills. [REDACTED] states she currently lives in a room in her brother-in-law’s house and works long hours in order to send money to her husband and children in Mexico. She states she has spent a lot of money traveling to Mexico and calling her husband and children in Mexico. Ms. [REDACTED] contends she has traveled to Mexico at least eight times and has not been able to keep a steady job because of her frequent travels. She states her children have gotten ill during their time in Mexico, suffering from stomach infections, and that since her medical insurance does not cover her children in Mexico, she has spent a lot of money on doctors and medications in Mexico. She contends the applicant worked very hard when he was in the United States to help pay for necessary expenses. According to [REDACTED], she owes her brothers-in-law \$15,000. Furthermore, [REDACTED] states she cries every day and has to take tranquilizers to make it through the day and to fall asleep at night. She states she has “lost everything” since her husband was deported and that “[w]ithout him [her] life has no meaning.” She states she has applied for a “medical card” in order to see a psychologist as she “feel[s] that [she is] at the end of the rope [and] cannot continue with this life.” She states she “cannot continue carrying this heavy load by [her]self” and “need[s] to be treated by a psycholog[ist] or [she] will end up in a mental institution.” [REDACTED] states she cannot go back to Mexico to live because they have nothing in Mexico and the applicant has yet to find a stable job even though he has been there for more than a year. She claims that her entire family now lives in the United States, including her parents, her sisters, niece, and nephews. She claims her husband’s entire family also lives in the United States. *Affidavit of* [REDACTED], dated March 1, 2007; *Letter from* [REDACTED], undated.

██████████ sister, ██████████ states that ██████████ has suffered so much she has become very ill. ██████████ contends her sister “has to look for three jobs to be able to help her family stay afloat here in the United States.” She further contends ██████████ lost her apartment, her car, and had to send her two children to Mexico to be with the applicant. *Affidavit from* ██████████ undated.

The applicant asks forgiveness for not leaving the United States when he was supposed to leave. He states he did not leave when the immigration judge had ordered him to leave because his son was very sick and was going to have ear surgery. The applicant contends he did not want to leave his wife during this difficult time and that his wife did not have enough money to stay in the United States without him. In addition, the applicant claims he “was a victim of notary fraud” because he paid a person he believed was an attorney to file an application for adjustment of status. The applicant contends this individual filed an application for which the applicant did not qualify. The applicant states he has been unable to support his family in Mexico and contends his wife and children have suffered very much due to the family’s separation. *Letter from* ██████████, undated.

A letter from ██████████ physician states ██████████ has been under medical treatment from March until September 2006 due to a “Depressive Neurosis.” *Letter from* ██████████ dated January 18, 2007.

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

In this case, the AAO finds that ██████████ has suffered, and will continue to suffer, extreme hardship if the applicant’s waiver application were denied. The record shows that ██████████ has suffered extreme financial hardship since the applicant was deported. Specifically, the record indicates ██████████ lost her apartment, car, and personal belongings. In addition, and more importantly, the record shows that ██████████ lost her two U.S. citizen children because she was unable to provide for them in the United States by herself. Furthermore, tax documents in the record show that in 2004, before the applicant’s deportation in September of that year, ██████████ earned \$19,985 and the applicant earned \$19,948, both from working two different jobs. Therefore, it is evident from the record ██████████ has suffered extreme financial hardship since the applicant departed the United States. In addition, the record shows ██████████ has suffered extreme emotional hardship. Although the record could have included more extensive documentation, such as documentation of the tranquilizers ██████████ has purportedly been prescribed, the record does include a letter from a physician indicating ██████████ has been treated for “Depressive Neurosis.” *Letter from* ██████████ *supra*. Considering ██████████ feels she “was forced to leave [her] children in Mexico with their father,” and has “lost everything” including her apartment, her car, and her personal possessions, *Affidavit and Letter from* ██████████ *supra*, the AAO finds that the effect of separation from the applicant on ██████████ 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 back to Mexico to avoid separation would be an extreme hardship for [REDACTED]. 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 addition, [REDACTED] is very close with her family, including her parents, sisters, niece, and nephews, all of whom live within fifteen minutes of her in the United States. Furthermore, Ms. [REDACTED] would need to give up her jobs in the United States and, given that her husband has been unable to find stable employment in Mexico for over a year, may not be able to find employment in Mexico. The record therefore shows that if [REDACTED] were to move back to Mexico, she would experience hardship above and beyond what would normally be associated with deportation.

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 factors in the present case are the applicant’s unlawful entry and presence in the United States and the applicant’s failure to voluntarily depart the United States pursuant to the immigration judge’s order. 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, two U.S. citizen children, and other family members; the applicant’s history of working and paying taxes in the United States; and the fact that the applicant has not had any criminal arrests or convictions in the United States.

The AAO finds that, although the applicant’s immigration violations are 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.<sup>1</sup>

**ORDER:** The appeal is sustained.

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<sup>1</sup> The AAO notes that the applicant’s Form I-212, Application for Permission to Reenter the United States was denied in the same decision as the Form I-601. As the approval of a Form I-212 is based on the same discretionary factors as in the approval of a waiver application, the AAO further finds that the Form I-212 should be reevaluated and a new decision entered.