

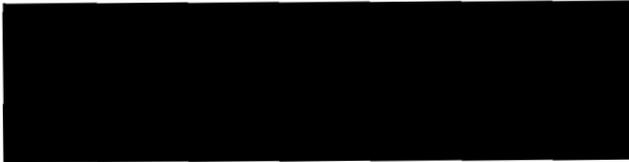
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H2

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: FEB 17 201

(CDJ 2004 717 051 relates)

IN RE:



APPLICATION:

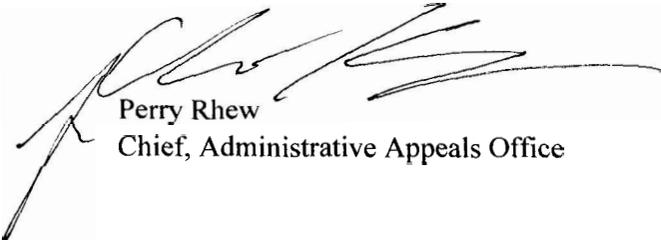
Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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.



Perry Rhew  
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. § 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 a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated February 27, 2007.

The record contains, *inter alia*: three letters from the applicant's wife, [REDACTED] a letter from [REDACTED] therapist; a letter from [REDACTED] employer; financial documents; 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:

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 the applicant does not contest, that he entered the United States in May 1999 without inspection and remained until March 2006. The applicant accrued unlawful presence for over six years. He now seeks admission within ten years of his 2006 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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 (BIA) 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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> 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 (9<sup>th</sup> 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 "lost everything, [her] health is in constant [distress] and [she] emotionally and mentally can not take much more." [REDACTED] explains that when her husband received the appointment for his interview in Ciudad Juarez, they left their apartment in Alabama and paid their rent two months in advance. However, [REDACTED] contends that they were in Juarez for more than two months and that, as a result, they were evicted from their apartment and had all of their personal belongings thrown away. She further contends that the tenants who moved into their apartment used the utilities and water under her name, leaving her with unpaid bills until services were terminated for failure to pay. Furthermore, [REDACTED] states she lost her job which paid her \$600 per week because of the time she missed while she was out of the country. According to [REDACTED] they are over \$8,000 in debt to friends and family and do not have enough money for food.

[REDACTED] states that she moved to Mexico with her daughters in order to be with her husband, but that things got even worse. She contends she had to wash their clothes on the rocks in the river and that in order to earn money for food, she and her husband worked as "jornaliando" in which they use machetes to cut grass, weeds, and other brush or shrubbery, which is "a very, very, hard, tir[ing], and exhausting job." In addition, [REDACTED] states that she and her daughters were attacked by mosquitoes and red ants, covering their bodies with itchy, red bumps, and that her youngest daughter almost got bitten by a rattlesnake in her bedroom.

According to [REDACTED], after six months in Mexico, she started experiencing extreme hair loss, dizziness, and extreme weight loss to the extent that her husband sold everything he had in order to send her and their daughters back to Alabama to see a doctor because the doctor in their town in Mexico refused to see them as they "were not natives from there." [REDACTED] states that back in Alabama, her daughters got check ups and were both found to have worms. [REDACTED] herself was told by a doctor that her dizziness was caused by too much stress and her hair loss was because of extreme weight loss due to malnutrition.

[REDACTED] contends that after the doctor visits, she and her daughters returned to Juarez to be with her husband and moved into the first place they could afford, "a one bedroom apartment, with no windows, no furniture, no gas, and no locks on the doors." [REDACTED] states that she continues to wash clothes by hand and they take baths only every two weeks because there is no gas line and no hot water heater. She states they "have no refrigerator, no beds, no tables, no windows, and no locks on the doors (front or back), [and that they] have nothing." [REDACTED] states that there is not enough food for her family and that she often does not eat so that her children may eat. [REDACTED] states that her daughters have outgrown all of their clothes and that she does not have money to buy them clothes or shoes even from thrift shops. She states that she got a job in El Paso, Texas, which is two hours away and pays minimum wage.

[REDACTED] states that she continues to be unable to adjust to the climate, language, and culture of Mexico. She states that her daughter gets nosebleeds two or three times a day due to the dry climate. [REDACTED] states she has dizzy spells, migraines, temporary blindness, and "now . . . hear[s] voices."

She states that her life has fallen apart and that she cannot focus on taking care of her children or her husband. She claims she has been notified by her employer that because of her concentration problems and hygiene problems, she may lose her job.

Furthermore, [REDACTED] states that she recently found out she is pregnant and that she had a low placenta that could turn into placenta previa. [REDACTED] contends she does not have insurance and has no money to pay for medical care. She states that her husband had been the head of the household and provided everything they needed, but that now that it is her responsibility, they lack everything. She states she is completely overwhelmed by this change in their lives and the poverty, but that she endures it because they are a Christian family. [REDACTED] contends that before she met her husband, she was “an irresponsible, immature, disorderly person [who] had no respect for [her]self or anybody else,” but that her husband got her involved in the church and that because of him, she has become a respected Christian who owes everything to him. [REDACTED] states that she and her husband were in school and majoring in Bible theology at the Madison Bible Institute in Alabama and had planned to become missionaries after graduation. She states that her religion states that once they are married, they must stay together and that the Bible says that she must follow and “submit to” her husband. *Letters from [REDACTED]*, dated March 21, 2007, February 9, 2007, and March 12, 2006.

A letter from a health care professional in Mexico states that [REDACTED] had a psychological consultation. According to the letter, [REDACTED] has “an emotional disorder associated with extreme generalized anxiety and Depression.” In addition to listing more than twenty-five symptoms [REDACTED] is experiencing, the letter states that “[t]he degree of impairment varies, but the most serious complication is suicide.” The letter also states that [REDACTED] “started to have these symptoms when she was 15 years old [and that h]er family [sought] psychiatric treatment for one year.” [REDACTED] purportedly took Paxil for one year, but then stopped “after apparently her response to treatment was acceptable.” The letter recommends [REDACTED] receive individual and family therapy, but that she not take any medications because of her pregnancy. *Letter from [REDACTED]* dated March 15, 2007.

A letter from [REDACTED] employer in El Paso states that [REDACTED] “has shown signs of hardship [since] her first day of work.” [REDACTED] employer states that she walks long distances to get to work, is not getting proper nutrition and does not eat at all during the work day. In addition, according to the employer, “[s]he shows signs of not being able to take a shower or change/wash her clothes” and is “extremely quiet and non respondent to conversations,” not interacting with coworkers. The employer states [REDACTED] has missed days at work purportedly because “she has been trying to keep her kids warm because their lips or fingers are turning purple” and that the quality of her work has significantly decreased. The employer concludes that she may lose her job if she “continues to fail in her productivity and quality performance, as well as in her attendance.” *Letter from [REDACTED]*, dated March 15, 2007. A copy of [REDACTED] pay stub in the record indicates a net pay of \$141 for two weeks.

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

The record shows that [REDACTED] has lost her apartment and her job in Alabama in order to stay with her husband. [REDACTED] and her daughters currently live in Mexico with the applicant in a small apartment with no heat, hot water, refrigerator, or furniture. The record shows that [REDACTED] does not eat so that her children can have food and that the family is unable to bathe regularly. She washes clothes by hand in the river and spends four hours each day commuting to a minimum wage job in El Paso, Texas. In addition, [REDACTED] has suffered numerous physical problems including dizzy spells as well as extreme weight loss to the extent she has experienced hair loss, and the record shows she does not have health insurance or the finances to receive medical treatment. Furthermore, the record shows that [REDACTED] has begun to hear voices and that she has a history of mental health issues that began when she was a teenager. The letters from [REDACTED] employer and a health care professional in Mexico substantiate her claim that she has suffered extreme hardship since moving to Mexico to be with her husband.

Furthermore, it would also constitute extreme hardship for [REDACTED] to return to the United States without her husband. The record shows [REDACTED] has lost her home and former employment in the United States. In addition, [REDACTED] religious beliefs require her to stay with her husband. As [REDACTED] contends, she is unwilling to consider living apart from her husband. Under these circumstances, and considering all of these factors cumulatively, the hardship [REDACTED] has experienced and will continue to 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 applicant's significant family ties in the United States including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant's wife if he were refused admission; and the applicant's lack of any criminal convictions.

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.

**ORDER:** The appeal is sustained.