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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date: FEB 19 2010
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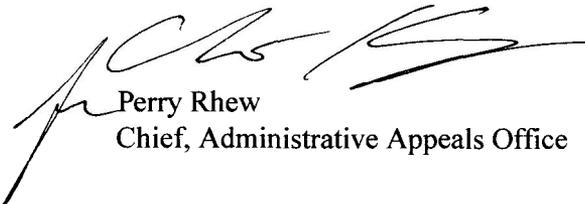
APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(a)(9)(B)(v) of
the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO). 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 U.S. citizen, and she 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 her husband and children in the United States.

The OIC found that the applicant failed to establish extreme hardship to her citizen spouse, and denied the application accordingly. *Decision of the OIC*, dated Feb. 16, 2007. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband and family. *See Brief in Support of Appeal*.

The record contains, *inter alia*, a copy of the birth certificate for the couple's U.S. citizen daughter; an affidavit from the applicant's husband; a statement from the applicant; a letter from the applicant's husband's employer; financial documents; a psychosocial assessment of the applicant's husband; and a brief in support of the appeal. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(9) 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 [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.

The applicant claims that she entered the United States without being inspected and admitted in or around November, 2003. *See Form I-601, Application for Waiver of Ground of Excludability*. The applicant's spouse filed a Petition for Alien Relative (Form I-130), which U.S. Citizenship and Immigration Services approved on July 16, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in March, 2006. *See Form I-601, supra*. The applicant's unlawful presence for one year or more 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

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, 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 affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). 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) (en banc).

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. at 565. 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 565-66. 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) ("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.

¹ The OIC 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 OIC, 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).

1979) (noting in the context of a waiver under section 212(i) of the INA 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 *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.²

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO finds that the applicant has established that the denial of a waiver imposes extreme hardship on her spouse if he remains in the United States without his wife and children, or if he relocates to Mexico to be with his family.

The record reflects that the applicant’s spouse, [REDACTED] is a 44-year-old native of Mexico and citizen of the United States. *See Form I-130, supra*. The applicant and her husband have been

² The OIC erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO is sustaining this appeal after a *de novo* review, this error is harmless.

married for six years. *See id.* (indicating marriage in Mexico on November 10, 2003) The couple has a 4-year-old daughter and a 3-year-old son. *See Birth Certificate for [REDACTED] Affidavit of [REDACTED]* dated Mar. 7, 2007 (indicating birth of son [REDACTED] in Mexico on October 28, 2006). Both children reside in Mexico with the applicant. *See Affidavit of [REDACTED] supra.* The applicant's spouse asserts that he is suffering extreme financial and emotional hardships as a result of the denial of the waiver.

[REDACTED] claims that the separation from the applicant has caused extreme financial hardship. *Id.* The record reflects that [REDACTED] is employed as a bus person in Las Vegas, Nevada, and that he made \$8.80 per hour in 2007. *See Employment Verification Letter.* At that time, [REDACTED] expenses amounted to over \$1,809 per month, including a mortgage payment of \$1,266, for a home he bought in 1992. *See Financial Documents.* Additionally, [REDACTED] was making payments on unsecured debt in the amount of \$6,378, which he incurred during the time he lived in Mexico with the applicant. *See id.; see also Affidavit of [REDACTED] supra.* [REDACTED] states that he is "always stressed about [his] financial situation . . . worried that [he] cannot pay [his] monthly bills and debts and support [his] family." *Affidavit of [REDACTED] supra.* Although he does not make enough to cover his expenses, [REDACTED] spends approximately \$1,000 each time he travels to Mexico to visit his family. *Id.*

In support of the emotional hardship claim, the applicant's husband states that separation from his family has caused him "depression, emotional anxiety, anger and frustration." *Id.* [REDACTED] claims that he has difficulty sleeping, he suffers anxiety attacks because he worries about his family's safety, he cries when he is home alone, and he has a hard time functioning at work because he is distracted and tense. *Id.* [REDACTED] reported to a licensed clinical social worker that "he previously suffered from a severe anxiety disorder, panic attacks, depression, headaches, and symptoms of Agoraphobia, for all of which he was prescribed Effexor, Buspar, Lortab, Zyprexa, and Provigil, and [he] suffers from Claustrophobia." *Psychosocial Assessment*, by [REDACTED] The social worker opined that [REDACTED] presented "multiple symptoms of depression," and recommended, among other things, that he continue taking antidepressant medication, seek therapy to address his depression, and consult a financial expert to help him to assess his financial situation. *Id.*

Here, the applicant's spouse has shown that the multiple hardships caused by the separation from his wife and children, when considered in the aggregate, constitute extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383. Although the separation of family members and financial difficulties alone do not establish extreme hardship, the financial and psychological impact of [REDACTED] prolonged separation from his wife and young children, takes this case beyond the ordinary hardships to be expected when one family member is inadmissible. Accordingly, the applicant has shown that the cumulative impact of the emotional and financial hardships is extreme. *See Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation).

The applicant's spouse also has provided evidence that he would suffer extreme hardship if he were to relocate to Mexico to live with his wife and children. First, [REDACTED] has lived in the United States for almost 30 years. *See Affidavit of [REDACTED] supra* (stating that he has resided in the United States since 1981). His father and three siblings are lawful permanent residents of the United States, and one sister is a U.S. citizen. *Id.* [REDACTED] states that he sees his family regularly, and shares a close relationship with them. *Id.*; *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of the presence of family ties to U.S. citizens or lawful permanent residents in the United States).

Second, [REDACTED] lived with the applicant in Mexico for seven months in 2006 and 2007, and states that the very difficult living conditions in Mexico would cause extreme hardship. *See Affidavit of [REDACTED] supra*. Specifically, [REDACTED] states that they lived in a small one-bedroom adobe house with the applicant's parents, which lacked a stove, running water, toilet, or refrigerator. *Id.* Further, the family lives 45 minutes away from the nearest doctor and store. *Id.* Additionally, [REDACTED] claims that Zacatecas is a dangerous area of Mexico. *Id.*; *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (recognizing importance of country conditions and the diminished availability of medical care where the qualifying relative would relocate).

Third, [REDACTED] states that he was unable to find a job during the seven months that he lived with the applicant in Zacatecas, Mexico. *See Affidavit of [REDACTED] supra*. Without income from employment, [REDACTED] states that he would not be able to support his family in Mexico. *Id.* Given [REDACTED] documented inability to meet his financial needs based on his income in the United States, [REDACTED] would lack the resources to support himself and his family in Mexico without employment. *See Financial Documents*; *see also Psychosocial Assessment, supra* (noting [REDACTED]'s deteriorated financial situation); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (recognizing importance of the financial impact of departure). Further, relocation would cause [REDACTED] to lose his home in the United States, and he would be unable to make payments on the debt he incurred during the time he lived with the applicant in Mexico. *See Financial Documents*; *Affidavit of [REDACTED] supra*.

Based on [REDACTED] evidence of financial and psychological hardships to himself as a result of family separation, and his long residence, family ties, and employment in the United States, coupled with the conditions faced by his family and his inability to find work in Mexico, the AAO finds that the applicant has established extreme hardship to her spouse if the applicant is prohibited from entering in the United States, or if her husband leaves the United States to be with his family. Although not all of the relevant factors in this case are extreme in themselves, the entire range of factors considered in the aggregate takes the case beyond those hardships ordinarily associated with deportation or inadmissibility, and supports a finding of extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383; *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

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 applicant's entry without inspection and the unlawful presence for which she seeks a

waiver. The favorable and mitigating factors in this case include: the applicant's ties to her U.S. citizen spouse in the United States; the applicant's lack of a criminal record; and the extreme hardship to the applicant and her spouse caused by the denial of a waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that the favorable factors in this case outweigh the adverse factors, and that a grant of relief in the exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.