

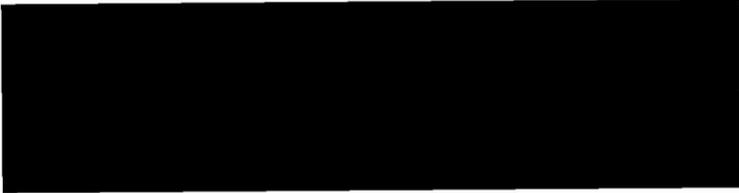
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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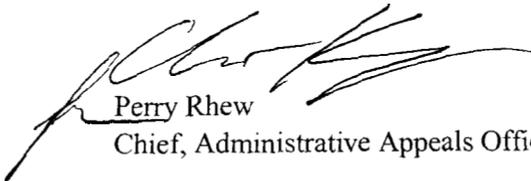
APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(a)(9)(B)(v) of  
the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 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 30-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 District Director found that the applicant failed to establish extreme hardship to her citizen spouse, and denied the application accordingly. *Decision of the District Director*, dated September 22, 2006. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband. *See Form I-290B, Notice of Appeal*, dated October 10, 2006; *Brief on Appeal*.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on May 23, 2003, in California; copies of the birth certificates for the couple's U.S. citizen daughter and the applicant's U.S. citizen son; a declaration from the applicant's husband; letters from the applicant's husband's pastor, employer, and friends; medical records for the applicant and her husband; a psychological assessment of the applicant's husband; and a brief in support of the appeal.

The AAO reviews these proceedings de novo. *See* 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."). 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.

8 U.S.C. § 1182(a)(9)(B). The record shows that the applicant first entered the United States without being inspected and admitted in or around December, 1996, and that she remained in the United States until June, 1997. *See Form I-601, Application for Waiver of Ground of Excludability*. The applicant again entered the United States without being inspected and admitted in or around April, 2000, and she returned to Mexico in or around June, 2003. *Id.* The applicant's spouse filed a Petition for Alien Relative (Form I-130) on July 15, 2003, and U.S. Citizenship and Immigration Services approved the petition on September 22, 2004. *See Form I-130, Petition for Alien Relative*. 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).<sup>1</sup>

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 lawfully 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

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<sup>1</sup> 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).

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. 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 held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that the applicant has established that the denial of a waiver imposes an 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 is a 42-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for* [REDACTED]. The applicant and her husband met in or around 2001, and they have been married for six years. *See Marriage Certificate; Psychological Assessment* (noting that the couple lived together for two years before marriage). The couple’s daughter was born in 2003, *see Birth Certificate for* [REDACTED], and she resides in Mexico with the applicant, *see Psychological Assessment*. The applicant has two minor children

from a previous marriage. *See Form I-130*. The record also indicates that that applicant was pregnant in April, 2007. *See Letter from [REDACTED]* dated April 20, 2007. The applicant's husband has two daughters from a previous marriage. *See Declaration of [REDACTED]*. The applicant's spouse asserts that he is suffering extreme emotional, financial, and medical hardships as a result of the denial of the waiver.

In support of the emotional hardship claim, the applicant's husband states that he is suffering without his wife and children by his side. *See Declaration of [REDACTED]*. Mr. [REDACTED] asserts that he misses his wife terribly, and also misses his daughter and two stepchildren, whom he has raised as his own. *See id.* Due to his work schedule, [REDACTED] states that he is only able to visit his family for one week every 6 to 8 months. *Id.* Further, he recounts that his daughter does not want to come close to him during his visits to Mexico, and he fears that she will be estranged from him. *See Psychological Assessment*. [REDACTED] has been a member of the Agape International Community Church for many years, and the church leadership and members emphasize the importance of family unity. *See Declaration of [REDACTED]*; *see also Letter from [REDACTED]*. Mr. [REDACTED] has discussed the separation of his family with his pastor. *Letter from [REDACTED]*. Although he has continued to attend the church, [REDACTED] "feel[s] that there is a void" without the presence of the applicant, and he is no longer able to attend the marriage retreats that they enjoyed together. *Declaration of [REDACTED]*

The applicant's spouse has reported to a licensed clinical social worker that he feels "extremely lonely, hopeless, and depressed" without his family, and because he has also lost his parents and two brothers, he feels "very isolated and alone." *See Psychological Assessment*. [REDACTED] also reported a decrease in appetite, sleep disturbance, fatigue, loss of interest in everything, and stated that "[h]e spends most of his time alone thinking about how different his life would be if his wife and children were with him." *Id.* As a result of his mental state, [REDACTED] reported a decrease in concentration at work, causing him to make more mistakes. *Id.* He also "is more irritated and not as friendly with other co-workers." *Id.* Supporting letters in the record indicate that [REDACTED] has changed as a result of the separation from his family. *See Letter from [REDACTED]* (noting "a change in [REDACTED]" including immense suffering as a result of the separation); *Letter from [REDACTED]* (noting that [REDACTED] "seems sad and has been keeping himself occupied"). The social worker diagnosed [REDACTED] with "adjustment disorder with mixed emotional features of anxiety and depression," and noted the following four severe factors affecting his mental state: "death of mother, family in Mexico, financial problems, health problems." *Psychological Assessment* at 3. The social worker recommended counseling and, if the symptoms do not improve, medication. *Id.*

Regarding financial hardship, the applicant's spouse states that he has been employed as a welder with the same company for over 18 years, *see Declaration of [REDACTED]*, and that his 2006 rate of pay was \$18.62 per hour, *Letter from [REDACTED]*. He maintains medical and dental insurance for the family, but it does not cover the applicant and her children in Mexico. *See Health Insurance Cards; Psychological Assessment*. [REDACTED] claims that he sends \$500 per month to the applicant, and that he provides additional support when there are medical needs. *See Psychological Assessment; Declaration of [REDACTED]* (stating that he paid for three operations

for the applicant in Mexico). Because he could not afford to pay for his apartment in the United States while supporting his family in Mexico, [REDACTED] gave up his apartment and moved in with his sister-in-law. *Psychological Assessment*. Regarding medical hardships, the record shows that applicant's husband has suffered from bilateral carpal tunnel syndrome, and [REDACTED] states that he needs to have two more operations for this condition. *See Medical Records; Declaration of [REDACTED]*. The applicant's spouse states that he needs his wife to help care for him during post-operative recovery. *Declaration of [REDACTED]*. [REDACTED] has hypertension, *see Medical Records*, and he claims a bone spur, high cholesterol, and irritable bowel syndrome, *Declaration of [REDACTED]*.

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 psychological and religious impact of [REDACTED] prolonged separation from his wife, daughter, and stepchildren, 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, religious, financial, and medical hardships is extreme. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *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 based on his strong ties in the United States.

[REDACTED] has been a U.S. citizen since 2001. *See Certificate of Naturalization for [REDACTED]*. His two daughters from a previous marriage reside near Riverside, California, and he generally sees them on a monthly basis. *See Psychological Assessment*. Both his parents are deceased, and [REDACTED] states that apart from his immediate family, he does not have any remaining family ties of any significance in Mexico. *Declaration of [REDACTED]*. The applicant's spouse has a long history of steady employment as a welder with the same company in San Bernardino. *Id.*; *Letter from [REDACTED]*. Mr. [REDACTED] has medical and dental insurance through his employment, which would be lost upon relocation. *Health Insurance Card; Psychological Assessment*. The record shows that the applicant's spouse has been able to obtain medical care for his conditions through his insurance, *see Medical Records*, and that at times his family has been unable to "obtain decent medical treatment" in Mexico. *Psychological Assessment*. Finally, the record indicates the importance of [REDACTED] ties to his church and pastor in Fontana, California. *See Declaration of [REDACTED]*; *Letter from [REDACTED]*.

Based on [REDACTED] evidence of psychological, religious, financial, and medical hardships to himself as a result of family separation, and his long residence, work history and family and church ties in the United States, 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's spouse caused by the denial of a waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that although the immigration violations committed by the applicant are 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.