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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: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 04 2010

IN RE: [REDACTED]

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 PETITIONER:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 for having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She 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 return to the United States and reside with her husband and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 29, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband would suffer extreme emotional and financial hardship if he relocated to Mexico because he would be separated from his family member in the United States, would have difficulty readjusting to life there and finding employment due to his length of residence in the United States and economic conditions in Mexico, and would face dangerous conditions there due to the increasing rate of violence and drug-related crime. *See Brief in Support of Appeal* at 4-7. Counsel further asserts that the applicant's children would suffer hardship in Mexico, particularly his older son, who receives special assistance for a learning disability, and this would contribute to the hardship experienced by the applicant's husband. *Brief* at 7. Counsel additionally asserts that the applicant's husband is suffering extreme emotional and psychological hardship due to separation from the applicant and due to the hardship his sons have experienced since being separated from their mother. *Brief* at 5-7. In support of the appeal counsel submitted affidavits from the applicant's husband and other relatives, letters from the applicant's sons, information on conditions in Mexico, a letter from the applicant's employer, school records for the applicant's son, a psychological evaluation for the applicant's husband, and medical records for the applicant's son. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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 Secretary, 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable 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 Ninth Circuit Court of Appeals has held, “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 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See 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 emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the

type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), 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 is a thirty-two year-old native and citizen of Mexico who entered the United States without inspection in May 1992 and remained until January 2003, when she returned to Mexico. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the effective date of section 212(a)(9)(B) of the Act, until January 2003. The record further reflects that the applicant's husband is a thirty-eight year-old native of Mexico and citizen of the United States whom the applicant married in July 1996. The applicant currently resides in Mexico and her husband resides in Salt Lake City, Utah with their two sons.

Counsel asserts that the applicant's husband would suffering emotional and financial hardship if he relocated to Mexico because he has resided in the United States since he was fifteen years old and has strong family ties, including his five siblings who reside in Utah. The applicant's husband states that he has spent most of his life in the United States and has three brothers and two sisters in the United States with whom he is very close. *See Affidavit of [REDACTED]* dated June 28, 2007. He further states,

My mother and father in law live with me and my children here in Salt Lake City. They help me to raise my children until my wife can return and be with us. We are a very close knit family. I talk to my family members on a daily basis and we visit each other often. *Affidavit of [REDACTED]*

The applicant's husband further states that his older son has medical problems, has had surgeries for various conditions, and is currently receiving treatment for a respiratory condition that appears to be asthma. He states that his current job, which pays \$23 per hour and provides medical insurance, allows him to support his children, maintain their home, and pay for their medical care. *Affidavit of [REDACTED]*

Counsel asserts that the applicant's husband is suffering emotional and psychological hardship due to separation from the applicant, and in support of this assertion submitted a psychological evaluation prepared by [REDACTED] a clinical psychologist who interviewed the applicant's husband six times from June 8 to 24, 2007. The evaluation states that the applicant's husband shows signs of "considerable emotional distress related to his wife's uncertain immigration status," and "currently has acute depression and anxiety symptomology." *Psychological Evaluation by [REDACTED] [REDACTED], clinical psychologist, dated June 25, 2007.* [REDACTED] states that the applicant's husband has a history of suffering abuse as a child and as a result is suffering from Post Traumatic Stress Disorder (PTSD), and finds that he is vulnerable to abusing alcohol due to his past history and family history of alcohol abuse. *Psychological Evaluation by [REDACTED], clinical psychologist.* [REDACTED] further states that the applicant's husband feels bad that his children miss their mother terribly, and he reported that his older son has a learning disability and his teachers have expressed concern about the effects of long-term separation from his mother. *Psychological*

Evaluation by [REDACTED] Dr [REDACTED] concludes that the applicant's husband is suffering from PTSD as well as acutely severe depressive and anxiety symptomology caused by separation from the applicant, who provided "considerable emotional and personal support for him to maintain emotional stability" and ensured their older son received the special attention he needs when she resided in the United States. *Psychological Evaluation by* [REDACTED]

Letters from relatives of the applicant and her husband state that the applicant's older son has learning disabilities and has developed behavioral problems since the applicant departed the United States, and his younger son has very low self esteem and thinks it is his fault the applicant is not living with them. *See letters from* [REDACTED] *and* [REDACTED] dated June 28, 2007. School records further indicate that the applicant's older son seems unhappy and "doesn't care about school or himself," and his teacher reports being worried that he continues "to go downhill."

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if she is denied admission to the United States. The record indicates that the applicant's husband has resided in the United States since the age of fifteen, has significant family ties to the United States, and has stable employment that allows him to support his family and pay for his son's medical care. The evidence further indicates that the applicant's husband is suffering from PTSD and that separation from the applicant as well as the hardships to his sons caused by separation from their mother is causing him psychological and emotional hardship beyond that which would normally result from removal or inadmissibility. Evidence on the record establishes that the applicant's husband is experiencing symptoms of anxiety and depression and his condition is exacerbated because of PTSD resulting from abuse he suffered as a child. The psychological evaluation of the applicant's husband further concludes that he would be susceptible to abusing alcohol and drugs, as he did before meeting the applicant, if she is not permitted to return to the United States.

While the record does not contain specific evidence concerning any counseling or any other treatment the applicant's husband may currently be receiving, there is sufficient documentation to show that his emotional health has been deemed tenuous by a mental health professional. It further has been established that if the applicant's husband relocated to Mexico and faced separation from his family members and loss of his employment in the United States, he would suffer hardship beyond that which is normally experienced by family members as a result of removal or deportation. When considered in the aggregate, the factors of hardship to the applicant's husband constitute extreme hardship. This finding is largely based on evidence submitted with the appeal that documents the emotional and physical distress experienced by the applicant's husband since being separated from the applicant and exacerbated by trauma he has experienced in the past.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving

eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful entry and unlawful presence in the United States from 1992 to 2003. The favorable factors in the present case are the extreme hardship to the applicant's husband and children; the applicant's lack of a criminal record or other immigration violations; the applicant's family ties to the United States, including her parents, husband, and children; and her length of residence in the United States before returning to Mexico.

The AAO finds that the immigration violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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.