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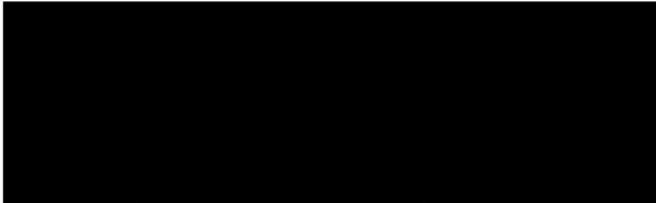
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: **JAN 21 2010**  
(CDJ 2004 726 234 relates)

IN RE: Applicant: [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 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 waiver application will be approved.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in June 1997 and did not depart the United States until November 2005. The applicant was thus 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.<sup>1</sup> The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children, born in 2001 and 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 23, 2007.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

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...

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<sup>1</sup> The applicant does not contest the district director's finding of inadmissibility. Rather, he is requesting a waiver of inadmissibility.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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.

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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to her husband's long-term absence. She states that it has been extremely hard trying to raise two boys by herself while maintaining the family. In addition, the applicant's spouse notes that her children are suffering emotional hardship due to long-term separation from their father and their inability to see their mother often because she is working 40 plus hours, plus overtime and nights, which, in turn, is causing extreme hardship to the applicant's spouse, the only qualifying relative in this case. She contends that she is unable to travel to Mexico regularly to visit the applicant as she has to work and earn money. Finally, the applicant's spouse asserts that she is experiencing financial hardship as the applicant is not in the United States to assist with the finances of the household.<sup>2</sup> Although she maintains full-time employment and oftentimes works overtimes and nights, she declares that she is suffering without her husband's financial assistance. Due to her spouse's absence, she has been forced to move out of their apartment and is now living with her sister and her family; they live in a two-bedroom apartment, with five kids and three adults. *Letter from* [REDACTED]

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<sup>2</sup> The record indicates that prior to the applicant's departure from the United States, he had been employed as a Laborer. See *Form G-325A, Biographic Information*, dated March 20, 2006.

In support of the hardships referenced by the applicant's spouse, a letter has been provided by the applicant's spouse's sister, confirming that the applicant's spouse and children are residing with her as they are unable to afford their own apartment, and due to the applicant's spouse's long hours at work, the applicant's spouse's sister is doing the majority of the parenting required. She notes that the burden of having her sister's family residing with her is stressful for her and her family, and she does not know how long the arrangement will last. *Letter from* [REDACTED] In addition, a letter has been provided from the applicant, confirming that the salaries in Mexico are so low that he is unable to provide financial support to his spouse and children in the United States. *Letter and Translation from* [REDACTED] dated March 9, 2007.

Due to the applicant's inadmissibility, the record indicates that the applicant's U.S. citizen spouse has had to assume the role of primary caregiver and breadwinner to two young children, both experiencing hardships due to long-term separation from their father and daily absences from their mother due to her employment, without the complete support of the applicant. The record reflects that the applicant's spouse needs her husband on a day to day basis, to help with the care of their children and to provide critical financial support. The AAO thus concludes that based on the totality of the circumstances, were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse states that Mexico is not a place to raise her kids. She notes they were born in the United States and have the right to be happy and get far in life. *Supra* at 2. She further asserts that there is not a day that goes by that the news does not reference crimes in Mexico. She notes that there is a lot of vandalism, theft, killings, shootings and even rape in Mexico and she does not want to relocate there with her children. *Declaration of* [REDACTED] dated March 1, 2006.

In support of the applicant's spouse's statement with respect to the problematic country conditions in Mexico, the AAO notes that the U.S. Department of State has issued a travel alert for Mexico. As noted by the U.S. Department of State:

Although the greatest increase in violence has occurred on the Mexican side of the U.S. border, U.S. citizens traveling throughout Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times. Bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. In recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved.

*Travel Alert-Mexico, U.S. Department of State, dated August 20, 2009.*

The record reflects that the applicant's spouse would be forced to relocate to a country to which she is not familiar. She would have to leave her support network of family and friends and her job, and she would be concerned about her and her children's safety at all times while in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Mexico due to his inadmissibility, community ties, support letters, gainful employment, and the passage of more than 12 years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's

unlawful entry to the United States and unlawful presence and employment while in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.