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

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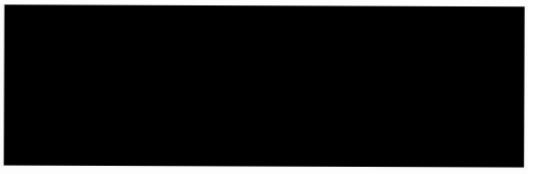

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 25 2010

IN RE: Applicant:

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

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, 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 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 6, 2007.

On appeal, the applicant's wife states that she is experiencing significant hardship due to separation from the applicant. *Statement from the Applicant's Wife*, dated September 6, 2007.

The record contains, in pertinent part, statements from the applicant's wife; a statement from a Family Psychiatric Nurse Practitioner regarding the applicant's wife's mental health; documentation regarding the applicant's wife's social security benefits, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering this decision.

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 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.

The record reflects that the applicant entered the United States without inspection in or about 1993, and he remained until December 2004. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until December 2004, totaling over seven years. The applicant now seeks readmission pursuant to a Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, the applicant's wife states that she is experiencing significant hardship due to separation from the applicant. *Statement from the Applicant's Wife*, dated September 30, 2007. She provides that she suffers from anxiety and depression, and that she is officially disabled for those reasons. *Id.* at 1. She explains that her symptoms started when she became aware that the applicant may return to Mexico due to the fact that he had difficulty finding employment as a worker without a legal immigration status. *Id.* She notes that the applicant did not want to be a burden, as she was supporting him in the United States. *Id.* She expresses that she is experiencing emotional hardship due to separation from the applicant. *Id.* The applicant's wife asserts that her doctor told her not to go to Mexico until she feels better. *Id.* She states that she cannot stop her treatment and relocate to Mexico. *Id.*

The applicant's wife provides that she is struggling financially, as she relies on social security and disability benefits. *Id.* She states that she expected the applicant to return to the United States to support her once his immigrant visa was approved. *Id.*

The applicant's wife previously stated that, because of the applicant's absence, she has been diagnosed with depression and anxiety. *Prior Statement from the Applicant's Wife*, dated November

28, 2006. She explained that she has been treated for these conditions, and that she is temporarily disabled. *Id.* at 1. She stated that travel to Mexico has placed a significant financial burden on her family. *Id.*

The applicant submitted a statement from regarding the applicant's wife's mental health. reports that the applicant's wife suffers from Post-traumatic Stress Disorder and Psychosis, and that separation from the applicant is causing her undue stress which is exacerbating her symptoms. *Statement from* dated September 28, 2007. asserts that the applicant's wife is dependent on him for support in the treatment of her psychiatric ailments. *Id.* states that the applicant's wife's conditions cause her anxiety which results in delusions, auditory and visual hallucinations, and suicidal ideations. *Id.* provides that separation from the applicant has increased the difficulty of treating the applicant's wife and obtaining a mentally stable state for her. *Id.*

The applicant provides documentation to show that his wife receives social security benefits, and that she has been on social security disability since June 2003. *Documentation from Social Security Administration*, dated September 17, 2007.

Upon review, the applicant has established that his wife will suffer extreme hardship if he is prohibited from entering the United States at the present time. The record reflects that the applicant's wife suffers from Post-traumatic Stress Disorder and Psychosis, and that separation from the applicant is negatively impacting her mental health. The applicant's wife receives treatment in the United States for her mental health, and she receives social security disability benefits due to her inability to work. The record reflects that the applicant's wife's mental health problems are, at least in part, caused or elevated by separation from the applicant. It is evident that the applicant's wife would no longer suffer such separation should she join the applicant in Mexico. However, given the applicant's wife's disability, the record does not show that merely reuniting her with the applicant would alleviate her symptoms. Ending the applicant's wife's course of treatment in the United States and causing her to unwillingly relocate to Mexico would have a significant impact on her mental health.

The record shows that the applicant's wife receives social security benefits to meet her needs. It is evident that she has limited resources, such that she would endure economic hardship should she endure the costs of relocating to Mexico. As the applicant's wife is disabled, she would be unable to engage in employment in Mexico for the foreseeable future.

The record shows by a preponderance of the evidence that the applicant's wife is enduring significant hardship that would not abate should she relocate to Mexico. Based on the foregoing, the applicant has established that his wife would experience extreme hardship should she join him in Mexico.

The applicant has shown that his wife will suffer extreme hardship should she remain in the United States without him. As discussed above, the applicant's wife suffers from significant mental health issues. A medical professional observed that separation from the applicant is exacerbating the applicant's wife's conditions and impeding her treatment. The applicant's wife indicated that family

separation is at the root of her health problems. Accordingly, the applicant has shown that his absence is a substantial detriment to his wife's health.

Based on the foregoing, the applicant has established that his wife will experience extreme hardship should she remain in the United States without him.

The AAO has considered all elements of hardship to the applicant's wife in aggregate. The applicant's wife's present mental disability represents an unusual circumstance that can be distinguished from the challenges commonly faced by spouses who reside apart or relocate due to inadmissibility. Thus, the applicant has shown by a preponderance of the evidence that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra,* at 12.

The negative factors in this case consist of the following. The applicant entered the United States without inspection and remained for a lengthy duration without a legal immigration status. The applicant worked or attempted to work in the United States without authorization. The applicant testified under oath that he previously entered the United States without inspection and was returned to Mexico by U.S. immigration officers the same day, then he again reentered without inspection the following day. *Form OF-194, Refusal Worksheet*, dated November 13, 2006.

The positive factors in this case include. The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen wife would experience extreme hardship if he is prohibited from residing in the United States; the record suggests that the applicant has remained outside the United States since his departure in December 2004, ending his pattern of violating U.S. immigration law, and; the record shows that the applicant has a propensity to engage in employment to support himself and his wife. *Form OF-194, Refusal Worksheet* at 2.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.