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

H2

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 741 533 relates)

Date: **JAN 28 2010**

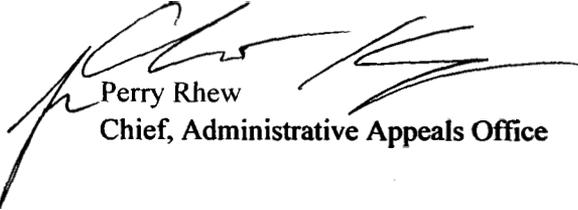
IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 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 naturalized U.S. citizen and 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 reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated June 23, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on November 12, 2002; a letter from the applicant; two letters from [REDACTED] a copy the couple's U.S. citizen child's birth certificate; a copy of [REDACTED] naturalization certificate; a letter from the applicant's therapist; a letter from the couple's child's doctor; several letters of support, including from [REDACTED] family members as well as from two professors addressing conditions in the applicant's town in Mexico; a copy of the 2005 U.S. Department of State Country Reports on Human Rights Practices for Mexico; copies of financial and tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) 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.

In this case, the district director found, and counsel admits, that the applicant entered the United States in July 1998 without inspection and remained until January 2005. *Appeal Brief* at 3. The applicant accrued unlawful presence for over six years. She now seeks admission within ten years of her 2005 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 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 Court of Appeals for the Ninth Circuit has held that “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) (“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s husband, [REDACTED] states that he and his wife have a young son who is in Mexico with his wife. [REDACTED] states that “[d]ue to motives and [his] work schedules and [his] financial situation,” he cannot have his son with him in the United States. He contends he is missing the best years of watching his son grow up. According to [REDACTED] his wife and son live in a small town in Mexico that has few resources and a “poor and small school[] where all grades are put together in one classroom.” He contends the houses do not have air conditioning, the streets are dirty, and there are a lot of mosquitoes that could cause illness. He states that water is available only every third day for four hours, that there is only one bus that goes from their town to the city in the morning and returns in the evening, and that the air is contaminated. In addition, [REDACTED] states that since his wife’s departure, he cannot sleep at night. [REDACTED] states that his wife always cooked for him and he does not know how to cook. He states he does not want to go home after work because the house feels empty without his wife and son. [REDACTED] contends he needs his wife by his side and that he is desperate to have his wife and son with him. He states his future, including his home and his work, is here in the United States, and that the only thing missing is his family. Furthermore, [REDACTED] claims he has suffered economically since his wife departed the United States because he has to send them money in Mexico. *Letters from* [REDACTED] dated August 17, 2006, and October 20, 2005.

A letter from the applicant states that she pays \$600 per month in rent, water, and electricity to her parents in Mexico. The applicant further states that “water is so scar[c]e” and is available only three days per week. She contends “the water tanks have to be washed constantly or mosquitoes . . . start[] gathering in it.” In addition, the applicant claims her son has gotten sick often since moving to Mexico. *Letter from* [REDACTED], dated August 17, 2006.

Numerous letters in the record state that [REDACTED] is depressed. For instance, [REDACTED] sister states that [REDACTED] “became a total different person after his wife and his two year old son had to stay in Mexico.” In addition, [REDACTED] sister states that her nephew, [REDACTED] son, has not adjusted to living in Mexico. She contends that her sister-in-law sent her a picture of her nephew “and he has lost a lot of weight.” *Letter from* [REDACTED] dated August 18, 2006; *see also Letter from* [REDACTED], dated August 17, 2006 (letter from [REDACTED]’s mother stating that her son is going through a “heavy depression”); *Letter from* [REDACTED] dated August 17, 2006 (letter from [REDACTED] brother stating that [REDACTED] is “very sad, preoccupied and depressed” daily); *Letter from* [REDACTED], dated August 17, 2006 (letter from [REDACTED] brother stating that [REDACTED] is sad and “needs help from a Psychologist”).

A letter from the couple's son's physician in Mexico states that their son, [REDACTED], who was then three years old, "has and [is] still suffering from several illnesses including . . . [r]espiratory infections[, p]haryngitis[, and g]astrointestinal infections." The physician further states that these illnesses developed "as a result of ill environment and nonadaptation to where he currently resides." *Letter from* [REDACTED], dated August 5, 2006.

Letters in the record address the conditions of the town in which the applicant lives. A letter from a physician in Mexico states that "Tetecalita is a rural location, with low levels of socioeconomics and [where] 30% of the population is illiterate." The letter further states that basic health care services are "very low" and that the main reason people move out of the community are because of respiratory infections and "sickness caused by diarrhetic infections." According to this physician, these illnesses, for which children under the age of five are the most susceptible, are due to "contamination of the surroundings, . . . noxious fauna[,] lack of public services," drastic temperature changes, poor nutrition, overcrowding, poorly ventilated residences, and a lack of electricity and plumbing in 50% of the residences. Malnutrition is purportedly very high and personal hygiene is low due to the lack of water. *Letter from* [REDACTED], dated July 20, 2006.

A letter from a "public servant of the Mexican government" states that the educational system, including "the facilities, furnishings and infrastructure " in the town of Tetecalita Morelos is "not the most adequate" for students. The letter states that "[t]his is because current equipment like computers, electrical blackboards, projectors, libraries, etc. . . the Mexican government provides them to centric institutions and [not] outside communities like this one. . . ." *Letter from* [REDACTED] [REDACTED] dated July 25, 2006; *see also Letter from* [REDACTED] [REDACTED] dated July 24, 2006 (stating that the "education in the town is very limited, due to the low economic level of the majority of the residents and the lack of support from the educational authorities and the government itself").

Another letter in the record states that the "economic situation has not been favorable to [the applicant]," and that the wages offered in different jobs are not enough to pay for necessities. The letter also states that the National Chamber of Commerce offers support to those who wish to start a new enterprise, but that the applicant does not have the resources to start a new enterprise. *Letter from* [REDACTED], dated July 25, 2006. Another letter states that the majority of the small businesses in Mexico employ only one or two employees at a "wage [that] is not enough to sustain . . . a household with the most basic things." *Letter from* [REDACTED], dated July 26, 2006; *see also Letter from* [REDACTED], dated July 22, 2006 (stating that the economy is based on agriculture during the rainy season and that because the work is seasonal, the rest of the year, people look for other types of work); *Letter from* [REDACTED], dated July 21, 2006 (stating that most people in Tetecalita work only during the rainy season, suffering for the rest of the year, do not have enough to eat, and "endure with tortillas and the basic grains like rice and corn").

Upon a complete review of the record evidence, the AAO finds that the applicant has established that her husband will experience extreme hardship if her waiver application is denied.

It is evident from the record that the applicant's husband will suffer extreme financial hardship if the applicant's waiver application is denied. The record shows that [REDACTED] has been supporting his wife and child in Mexico while also maintaining his household in the United States. The record indicates that [REDACTED] has worked at the Sam's Club (Wal-Mart Associates, Inc.) for the past five years, earning \$14.30 per hour. *Letter from Supervisor*, dated August 17, 2006; *Wal-Mart, Statements of Earnings and Deductions*. Copies of [REDACTED] pay stubs indicate that he earns approximately \$1,010 every two weeks while his monthly expenses in the United States total approximately \$2,580, including \$1,051 for mortgage, \$417 for a home equity loan, \$44 for utilities, \$42 for water, \$33 for sewage, \$33 for car insurance, \$90 for phone service, \$47 for cell phone service, and \$47 for television service. *Wal-Mart, Statements of Earnings and Deductions*; see also *2005 U.S. Individual Income Tax Return (Form 1040A)* (indicating that in 2005, [REDACTED] earned \$28,708). In addition, the record indicates the applicant pays \$600 for rent, water, and electricity, in Mexico, *Letter from [REDACTED] supra*, and receipts in the record show that [REDACTED] sends approximately \$360 to his wife per month. Significantly, the record shows that the applicant lives in a rural, depressed town in Mexico where she has been unable to find employment either as an agricultural worker or by starting or being hired by a small business. *Letter from [REDACTED] supra*. Even if the applicant were able to find employment in Mexico, the record indicates she would not earn enough to afford basic necessities such as food for her and her son. *Id.*; *Letter from [REDACTED] supra*; *Letter from [REDACTED] supra*; *Letter from [REDACTED] supra*. Considering [REDACTED] income and the plethora of evidence in the record addressing the serious, depressed economic conditions of the applicant's town, the AAO finds that [REDACTED] has suffered and will continue to suffer extreme financial hardship if the applicant's waiver application were denied. Under these unique circumstances, and considering these factors cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

It would also constitute extreme hardship for [REDACTED] to return to Mexico to avoid the hardship of separation from his wife. The record shows that [REDACTED] entire immediate family live in the United States, including both of his parents and his five siblings. [REDACTED] would need to readjust to a life in Mexico after having lived in the United States for seventeen years since he was fourteen years old, a difficult situation made even more complicated considering the town in which his wife lives lacks basic services such as running water and electricity. In addition, it is unclear whether [REDACTED] who has worked at Wal-Mart for over five years, would be able to find employment in Mexico given he has never worked in Mexico and his wife's town's economy is depressed and based primarily on agriculture. In sum, the hardship [REDACTED] would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

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 T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful entry and presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States including her U.S. citizen husband and child; the extreme hardship to the applicant's husband if she were refused admission; the fact that the applicant and her husband have paid taxes and filed joint tax returns in the United States; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when 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.