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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  
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Services

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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **JAN 29 2010**

IN RE:



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

ON BEHALF OF PETITIONER:

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 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 been unlawfully present in the United States for one year or more and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a visa through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Fiancé(e). The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to return to the United States and reside with her spouse.

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 April 14, 2008.

On appeal the applicant asserts that her husband is suffering extreme hardship due to being separated from the applicant and from concern over her safety and the safety of her children in Mexico. *See Brief in Support of Appeal*. Specifically, the applicant's husband asserts that his wife and children are in danger in Ciudad Juarez, Mexico due to violent conditions there, and he is suffering psychological and physical hardship as a result. *Brief* at 3-5. The applicant's husband further states that he is suffering financial hardship from having to support two households and his frequent trips to Mexico to visit his family are causing him to miss work. *Letter from [REDACTED]* dated May 11, 2008. The applicant's husband additionally asserts that he would suffer extreme hardship if he relocated to Mexico because of dangerous conditions and poor economic conditions there. *Brief* at 4-5. In support of the waiver application and appeal the applicant submitted letters from herself and husband, information on conditions in Mexico, documentation related to their purchase of a mobile home, documentation of her son's enrollment in a school in Ciudad Juarez, a letter from a doctor stating the applicant is being treated for anxiety, and certificates for courses completed by the applicant in the United States. 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.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver under sections 212(a)(9)(B)(v) and 212(i) 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. 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).

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 further stated:

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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

In the present case, the record reflects that the applicant is a forty-two year-old native and citizen of Mexico who entered the United States as a visitor in October 2002 and remained until January 28, 2006, when she returned voluntarily to Mexico. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. She was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for stating she was living in Mexico when applying for a laser visa in 2001 when she was living in the United States. The record further reflects that the applicant’s husband is a fifty-four year-old native and citizen of the United States. The applicant currently resides in Ciudad Juarez, Mexico with her children and her husband resides in El Paso, Texas.

The applicant’s husband states that he would suffer extreme hardship if he relocated to Mexico because it is a country “with a minimum wage workforce” and “is currently experiencing a drug war,” and the U.S. Department of State has warned U.S. Citizens of the dangers surrounding the drug war. *Brief* at 4-5. The U.S. Department of State recently issued a Travel Alert for Mexico. The Travel Alert states:

The Department of State has issued this Travel Alert to update security information for U.S. citizens traveling to and living in Mexico. It supersedes the Travel Alert for Mexico dated February 20, 2009, and expires on February 20, 2010.

....

Recent violent attacks have caused the U.S. Embassy to urge U.S. citizens to delay unnecessary travel to parts of Michoacán and Chihuahua (see details below) and advise U.S. citizens residing or traveling in those areas to exercise extreme caution. Drug cartels and associated criminal elements have retaliated violently against individuals who speak out against them or whom they otherwise view to be a threat to their organization, regardless of the individuals' citizenship. These attacks include the abduction and murder of two resident U.S. citizens in Chihuahua in July, 2009.

### **Violence Along the U.S. - Mexico Border**

Mexican drug cartels are engaged in violent conflict - both among themselves and with Mexican security services - for control of narcotics trafficking routes along the U.S.-Mexico border. In order to combat violence, the government of Mexico has deployed military troops in various parts of the country. U.S. citizens should cooperate fully with official checkpoints when traveling on Mexican highways.

Some recent Mexican army and police confrontations with drug cartels have resembled small-unit combat, with cartels employing automatic weapons and grenades. Large firefights have taken place in towns and cities across Mexico, but occur mostly in northern Mexico, including Tijuana, Chihuahua City, Monterrey and Ciudad Juarez. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. . . .

A number of areas along the border are experiencing rapid growth in the rates of many types of crime. Robberies, homicides, petty thefts, and carjackings have all increased over the last year across Mexico generally, with notable spikes in Tijuana and northern Baja California. Ciudad Juarez, Tijuana and Nogales are among the cities which have experienced public shootouts during daylight hours in shopping centers and other public venues. Criminals have followed and harassed U.S. citizens traveling in their vehicles in border areas including Nuevo Laredo, Matamoros, and Tijuana.

The situation in the state of Chihuahua including Ciudad Juarez is of special concern. The U.S. Consulate General recommends that American citizens defer non-essential travel to the Guadalupe Bravo area southeast of Ciudad Juarez and to the northwest quarter of the state of Chihuahua including the city of Nuevo Casas Grandes and surrounding communities. From the United States, these areas are often reached through the Columbus, NM and Fabens and Fort Hancock, TX ports-of-entry. In both areas, American citizens have been victims of drug related violence.

Mexican authorities report that more than 1,000 people have been killed in Ciudad Juarez in the first six-months of 2009. Additionally, this city of 1.6 million people experienced more than 17,000 car thefts and 1,650 carjackings in 2008. U.S. citizens should pay close attention to their surroundings while traveling in Ciudad Juarez,

avoid isolated locations during late night and early morning hours, and remain alert to news reports. Visa and other service seekers visiting the Consulate are encouraged to make arrangements to pay for those services using a non-cash method. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Alert*, dated August 20, 2009.

The applicant's husband has stated that he personally witnessed an incident in which a police officer and his son were gunned down in Ciudad Juarez in April 2008. In light of the level of violence there and other areas close to the United States-Mexico border, relocating to Mexico would cause him emotional distress as well as financial hardship due to loss of his employment and the hardship of adjusting to life in Mexico after residing in the United States his entire life.

The applicant's husband further asserts that he is suffering extreme hardship because he is separated from his family and fears for their safety in Ciudad Juarez. He states that he was caught in the crossfire of a violent incident in April 2008 while visiting his family in Mexico and had to hide along with several innocent bystanders to avoid the gunfire. He states, "I fear that my family will be caught in one of these unfortunate incidents and its (sic) overbearing to think that I am unable to help them." *Brief in Support of Appeal*. The applicant's husband further claims that he is suffering financial hardship because he must maintain two households and he must frequently miss work when he travels to Ciudad Juarez and has to wait in long lines to cross the border. *Letter from* [REDACTED] dated May 11, 2008. He additionally states that he suffers from high blood pressure and other medical conditions and his condition is exacerbated by fears for the applicant's safety.

In support of these assertions, the applicant's husband submitted newspaper articles describing violent crimes in Mexico, but the articles are in Spanish and were submitted without translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The AAO further notes that no evidence was submitted concerning the applicant's husband's medical condition or his financial situation. Nevertheless, in light of dangerous conditions in Ciudad Juarez and other cities near the United States-Mexico border as described in the August 20, 2009 Travel Alert, the AAO finds that the applicant has established that her husband would suffer extreme emotional hardship if the applicant and his stepchildren remain in Ciudad Juarez, Mexico and would face danger if he continues to travel there to visit them. Conditions in the border region have become increasingly violent over the past few years, and according to the applicant's husband, he was caught in the crossfire of one incident when visiting his family in 2008. These dangerous circumstances would result in emotional hardship beyond that which would normally be expected as a result of inadmissibility and separation from family members.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver 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) and section 212(i) 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 the 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-Moralez*, 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 immigration violations, including remaining in the United States unlawfully from 2002 to 2006 and falsely stating that she resided in Mexico when applying for a laser visa in 2001.

The favorable factors in the present case are the extreme hardship to the applicant's husband and her children who reside with her in Ciudad Juarez, evidence of her participation in family literacy and other community programs, and her lack of a criminal record.

The AAO finds that applicant's violation of the immigration laws 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.