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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

[redacted]

H3

FILE: [redacted] Office: MEXICO CITY Date: APR 2 8 2009

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:

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.

John F. Grissom
Acting 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)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 his 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 December 5, 2006.

On appeal the applicant asserts that his wife is suffering extreme hardship due to being separated from the applicant. Specifically, the applicant's wife states that she is suffering emotional and financial hardship since the applicant departed the United States, and she would suffer extreme hardship if she relocated to Mexico due to loss of her employment and medical insurance in the United States and dangerous conditions in Mexico. *See letter from* [redacted] dated February 25, 2009. In support of the appeal the applicant submitted letters from his wife, letters from physicians and mental health professionals providing treatment to his wife, articles on conditions in Ciudad Juarez and other areas of Mexico, laboratory results for the applicant's wife, a letter from the applicant's wife's employer, and a letter from a bishop in support of the waiver application. 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.

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. 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 (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.

In the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who initially entered the United States without inspection on or about March 10, 2001. The applicant remained in the United States until October 2005, when he traveled to Mexico. The applicant is therefore 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 more than one year. The record further reflects that the applicant's wife is a twenty-nine year-old native and citizen of the United States whom he married on February 13, 2004. The applicant currently resides in Ciudad Juarez, Mexico and his wife resides in Sacramento, California.

The applicant asserts that his wife is suffering extreme hardship because she suffers from depression that is exacerbated by being separated from the applicant. *See Letter from* dated February 25, 2009. The applicant's wife further states that she is extremely worried due to the high level of violent crime, including kidnappings and murders, in Ciudad Juarez and other Mexican cities near the U.S. border. *Id.* at 4-6. The applicant's wife further states that recently her uncle was beaten and her aunt was kidnapped from their place of business in Ciudad Juarez and also states she had been extremely fearful when she had visited the applicant there. *Id.* at 5-6. She states, "We are living in fear and all this is a trauma for all of us." *Id.* at 6. The applicant's wife further claims that she is suffering financial hardship and cannot pay her living expenses and provide financial assistance to the applicant on her income alone, and that she suffers from medical conditions, including diabetes and a liver condition, which would prevent her from relocating to Mexico because she would not have access to adequate medical care there. *Id.* at 2-4.

In support of these assertions, the applicant's wife submitted letters from a psychiatrist and therapist who are treating her for depression, anxiety and stress. A letter from states that the applicant began receiving treatment at the psychiatry department of the Permanente Medical Group in December 2005 for Major Depression with Secondary Panic Disorder. *See Letter from* , dated December14, 2006. The letter further states that the applicant's wife suffers from symptoms including mood, sleep, and appetite disturbance; excessive nervousness and dizziness; and agoraphobia and other phobias. *Letter from* Dr. states: "The symptoms have been present every day, and have worsened, despite attempts to address them through medication, group therapy, and behavioral modification. The patient has been compliant in her treatment." *Id.* additionally states that the applicant's wife has had positive and cooperative relationships with her providers, she has no history of "symptomizing for the purpose of primary or secondary gain," and her symptoms began following the absence of the applicant. *Id.*

A letter from a therapist states that the applicant's wife has been consulting her for help in dealing with the stress of being separated from her husband and "is experiencing situational depression as a result of this forced separation" as well as some medical problems. *See Letter from* *MA, MFT* dated October 7, 2008. A letter from the applicant's wife's employer also states that she has seen how the stress and depression the applicant's wife is experiencing has affected her work, and that she has become distant and distracted and has been seen in tears a few times. *See letter*

from , *Child Development Department, Sacramento City Unified School District* dated November 6, 2007.

The applicant's wife also submitted copies of several newspaper articles to support the assertions made about violent crime in Ciudad Juarez and other cities near the U.S. border. 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 notes, however, that the U.S. Department of State recently issued a Travel Alert for Mexico. The Travel Alert states:

> Mexican drug cartels are engaged in an increasingly 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 troops in various parts of the country. . . .
>
> 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 many towns and cities across Mexico but most recently in northern Mexico, including Tijuana, Chihuahua City and Ciudad Juarez. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. The U.S. Mission in Mexico currently restricts non-essential travel to the state of Durango and all parts of the state of Coahuila south of Mexican Highways 25 and 22 and the Alamos River for U.S. government employees assigned to Mexico. This restriction was implemented in light of the recent increase in assaults, murders, and kidnappings in those two states. . . .
>
> 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 recently 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 Ciudad Juarez is of special concern. Mexican authorities report that more than 1,800 people have been killed in the city since January 2008. *U.S. Department of State, Bureau of Consular Affairs, Travel Alert,* dated February 20, 2009.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letters from the mental health professionals who are treating the applicant's

wife indicate that she is suffering from serious depression and has been receiving treatment since 2005, but has not improved despite cooperating with her providers. The letters additionally state that her condition was brought on by separation from her husband. The AAO further notes that conditions in the border region of Mexico, where the applicant's husband resides, have become increasing violent over the past few years, and according to the applicant's wife, her own family members appear to have been recent victims of a violent kidnapping. The record further indicates that the applicant's husband, who currently resides in Ciudad Juarez, is from Mexicali, Northern Baja California, another area of Mexico where there are increasing levels of violent crime, and his father still resides in Baja California. It therefore appears that the applicant, who has family in these border areas and might not have the ability to relocate to another part of Mexico, is at some risk because of conditions in the border region. The rise in violent crime in Ciudad Juarez, where the applicant resides, and other border areas would also contribute to the emotional hardship the applicant's wife is experiencing, particularly in light of her psychological condition. The applicant's wife has stated that she was in fear when she visited the applicant in Ciudad Juarez, and, in light of her psychological condition, it appears that relocating to Mexico would cause her emotional distress as well as financial hardship due to loss of her employment and medical insurance benefits in the United States and the hardship of adjusting to life in Mexico after residing in the United States her entire life.

When considered in the aggregate, the factors of hardship to the applicant's wife should she remain in the United States or relocate to Mexico constitute extreme hardship. In light of her psychiatric condition, it appears that separation from the applicant is causing the applicant's wife great emotional distress that is jeopardizing her mental health. The dangerous conditions in Ciudad Juarez and other parts of Mexico where the applicant and his wife have family to assist them, when combined with financial and other hardships such as loss of employment and medical insurance in the United States and readjusting to life in Mexico after living in the United States for her entire life, would amount to hardship to the applicant's wife that is unusual or beyond that which would normally be expected upon removal or exclusion if she relocated to Mexico with the applicant.

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 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) 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 entry without inspection and remaining in the United States without authorization from March 2001 to October 2005.

The favorable factors in the present case are the extreme hardship to the applicant's wife, and the applicant's 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.