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



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FILE: Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: **MAY 22 2009**
CDJ 2004 708 218

IN RE:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom
Acting 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 record reflects that the applicant is a 28-year-old 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 in the United States for more than one year. The applicant is married to a U.S. citizen, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife (the applicant's spouse) and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to his citizen spouse, and denied the application accordingly. *Decision of the District Director*, dated June 26, 2006. On appeal, the applicant's spouse asserts that she will suffer extreme hardship if her husband is denied a waiver. See *Form I-290B Notice of Appeal*, dated July 21, 2006; *Declaration in Support of Appeal*.

The record contains, *inter alia*, a copy of the applicant's spouse's Certificate of Citizenship, dated November 13, 2002; a copy of the couple's marriage certificate, indicating that they were married on April 30, 2003, in Hanford, California; copies of the birth certificates for the couple's twin children [REDACTED] and [REDACTED], born on July 22, 2002, in Porterville, California; a Declaration in Support of the Appeal by the applicant's spouse, detailing the extreme hardship that she has encountered as a result of the denial of the applicant's request for a waiver; a letter from the applicant's spouse, dated June 28, 2005; a letter from the Lead Counselor at the Central California Family Crisis Center regarding the mental status of the applicant's spouse and her children; a letter from the applicant's spouse's employer; a copy of applicant's spouse's residential lease; and Internal Revenue Service Form 1098-T for 2005, indicating applicant's spouse's association with the College of the Sequoias in Visalia, California. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides:

(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 [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.

8 U.S.C. § 1182(a)(9)(B). The record shows that the applicant, [REDACTED] entered the United States without inspection in or around May, 1998. *See Form I-130, Petition for Alien Relative; Decision of the District Director, supra*. The applicant's spouse, [REDACTED] filed Form I-130, Petition for Alien Relative, on or around July 11, 2003, and USCIS approved the petition on June 29, 2004. *See Form I-130, Petition for Alien Relative, supra*. The applicant departed the United States in July, 2005. *See Decision of the District Director, supra; Form I-601, Application for Waiver of Ground of Excludability*. The applicant's unlawful presence for one year or more and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant himself, or to his children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *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 non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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

¹ The District Director erred in finding that the applicant's period of unlawful presence began on April 1, 1997, because he was not present in the United States until May, 1998. *See Decision of the District Director, supra* at 2. However, this error is harmless because the applicant did accrue more than one year of unlawful presence before he departed from the United States in July, 2005. The District Director also erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission," *see id.* at 3, because departure after unlawful presence of one year or more triggers a ten-year bar to admission, *see* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

would relocate. *Id.* at 566. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted).

Considering the cumulative impact of the relevant factors, the AAO finds that the applicant’s spouse has established that the denial of a waiver imposes an extreme hardship on her if she remains in the United States without her husband, or if she relocates to Mexico to be with her husband.

First, the applicant’s spouse, [REDACTED], has presented evidence of the psychological hardship imposed as a result of family separation. The record reflects that the applicant’s spouse and her husband have been in a relationship since 2000. *See Letter from Applicant’s Spouse*, dated June 28, 2005. The couple has been married for six years, *see Marriage Certificate*, and they have twins, who are now almost seven years old, *see Birth Certificates for [REDACTED] and [REDACTED]*. The applicant’s spouse states that the applicant has been “an exemplary father and husband,” and that their “lives would be shattered” if he is unable to obtain a waiver. *See Letter from Applicant’s Spouse, supra*. The applicant’s spouse also reports having a “very difficult personal time” as a result of the family separation, including “periods of depression and anxiety,” and “problems sleeping and staying asleep” due to her husband’s absence and the uncertainty regarding her future. *See Declaration in Support of Appeal*. The applicant’s spouse’s description of her psychological symptoms is corroborated by a Licensed Clinical Social Worker with the Central California Crisis Center, who interviewed the applicant’s spouse and confirmed her apparent “adjustment disorder with depressed mood and anxiety.” *See Letter from [REDACTED]*, dated July 19, 2006. The applicant’s spouse informed the social worker that she “frequently experienced depression,” resulting in “cr[ying] a lot; feeling tired and having little or no interest in doing things.” *Id.* The applicant’s spouse also reported that she was impacted by her children’s symptoms of insomnia, anxiety and sadness, as well as the burden of caring for her children on her own. *See Declaration in Support of Appeal; Letter from [REDACTED] supra*.

The applicant's spouse contends that the impact of her separation from her husband is heightened by her strained relationship with her father in the United States. *See Declaration in Support of Appeal*. Specifically, the applicant's spouse states that her father is very authoritarian and has been abusive to her and to her mother. *See id.* Because of this abusive relationship, the applicant's spouse has limited extended family support, which "makes it even more difficult and particularly painful for [her] to deal with the separation from [her] husband." *Id.*

Second, the applicant's spouse presented evidence of the hardship imposed on her because of the impact of family separation on her educational and career plans. *Declaration in Support of Appeal*. The applicant's spouse reports that the applicant has been "extremely supportive of [her] educational plans." *See Letter from Applicant's Spouse, supra*. While the applicant was in the United States, the applicant's spouse was able to attend the College of the Sequoias, where she planned to obtain an AA degree in science and to transfer to a university to pursue a degree in nursing. *See id.; Declaration in Support of Appeal; Letter from [REDACTED], supra; Internal Revenue Service Form 1098-T for 2005* (indicating the applicant's spouse's association with the College of the Sequoias). With the applicant's support, the applicant's spouse was able to attend evening classes, while he cared for the children. *See Letter from Applicant's spouse, supra*. The applicant's spouse was "very happy to be attending college" and "had the determination and the support to accomplish [her] educational goals." *See Declaration in Support of Appeal, supra*. Without her husband's financial and logistical support, the applicant's spouse is no longer able to attend college, and she fears that she will have to "abandon [her] plans to become a nurse." *See id.*

Third, the applicant's spouse has presented evidence of the extreme financial hardships that she faces as the sole wage earner for her family of three. The evidence shows that the applicant's spouse has been working as a grader for a packing company since November, 2000. *See Letter from [REDACTED]*, dated June 28, 2005 (noting an hourly wage of \$7.25). In 2006, the applicant's spouse earned a maximum monthly income of \$1,160, reflecting some overtime work. *See Declaration in Support of Appeal, supra*. At that rate, the applicant's spouse's maximum annual income of \$13,920 is significantly less than the federal poverty guidelines for a family of three, which was \$16,600 in 2006. Given her limited income, the applicant's spouse has had difficulty meeting all of her family expenses, including rent, utilities, food, and clothing for the family. *See id.* The applicant's spouse also lost her car insurance for lack of payment, and did not have enough money to fix her car when it broke down in 2006. *See id.* Finally, the applicant's spouse expressed frustration at the financial debts that she owes to friends and relatives. *See id.*

In sum, the applicant's spouse has provided evidentiary support for her contention that she faces extreme psychological, personal and financial hardships without the presence of her husband in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation).

The applicant's spouse also has provided evidence that she would suffer extreme hardship if she

were to relocate to Mexico to live with her husband. The applicant's spouse has lived in the United States since she was an infant, *see Declaration in Support of Appeal, supra*, and she became a U.S. citizen in 2002, *see Certificate of Citizenship, supra*. She has not returned to her birthplace in Sinaloa, Mexico, since her arrival in the United States. *See Declaration in Support of Appeal, supra*. The applicant's spouse attended "grammar, junior high, and high school here in Lindsay" California, and "all [of her] family and friends are here." *Id.* The applicant's spouse also indicates that her entire family is in the United States legally. *Id.* The applicant's spouse contends that although she is Mexican by birth, she has "assimilated to this country's way of life," and that she has the "typical expectations" of a young American mother and wife. *Id.* Finally, the applicant's spouse states that she would not "have the courage to take [her] children to Mexico to be reunited with their father" because she could not "in good faith, take away the opportunities the twins would have in this country versus what they would have in Mexico." *Id.* Although the hardships faced by the applicant's spouse's children are not calculated in the extreme hardship analysis, the impact of these hardships on the applicant's spouse is relevant to the claim. In sum, the applicant's spouse's contention that she would suffer extreme hardship if she relocated to Mexico has merit. *See Matter of Kao & Lin*, 23 I&N Dec. 45, 50-51 (BIA 2001) (considering, *inter alia*, location where the applicants spent their formative years, academic success in the American school system, and integration into the American lifestyle, in the extreme hardship analysis); *Matter of O-J-O-*, 21 I&N Dec. at 384-85 (finding extreme hardship where applicant entered the United States at 13, lived his formative adolescent years here, assimilated into American life and culture, completed school, worked, displayed community involvement, and had close friends and distant family relationships in the area).

Based on the applicant's spouse's evidence of psychological, personal and financial hardship to herself as a result of family separation, and her long residence, assimilation and family and community ties in the United States, the AAO finds that the applicant's spouse has established extreme hardship if the applicant is prohibited from entering in the United States, or if she leaves the United States to be with him. Although the relevant factors may not be extreme in themselves, the entire range of factors considered in the aggregate, takes the case beyond those hardships ordinarily associated with deportation, such as economic detriment due to job loss or the efforts ordinarily required in relocation, and supports a finding of extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

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 Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). The adverse factors in this case are the unlawful presence for which the applicant seeks a waiver. The favorable and mitigating factors in this case include: the applicant's significant ties to his U.S. citizen spouse and children in the United States; the applicant's lack of a criminal record; and the extreme hardship to the applicant, the applicant's spouse, and the couple's children, if he were denied a waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that although the immigration violations committed by the applicant are serious, 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.