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Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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U.S. Citizenship  
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Services

H6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **APR 02 2010**

IN RE: [REDACTED]

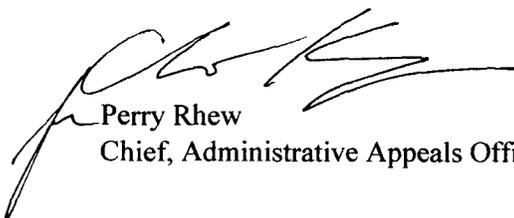
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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. The matter 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 her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated February 16, 2007.

On appeal, the applicant's husband asserts that he will endure extreme hardship if the applicant is not permitted to reside in the United States. *Statement from the Applicant's Husband on Appeal*.

The record contains statements from the applicant's husband, the applicant's friends, and a teacher of one of the applicant's children; a copy of the applicant's husband's naturalization certificate; copies of birth records for the applicant and the applicant's children; a copy of the applicant's marriage certificate; a letter from the applicant's daughter's pediatrician; a letter from the applicant's husband's physician; a report from a child development case manager regarding the applicant's children; a copy of a lease for the applicant's husband; copies of medical records for the applicant's children and husband; a copy of an electricity bill for the applicant's husband and another individual; copies of photographs of the applicant and her family, and; documentation regarding the applicant's unlawful presence in the United States. The applicant further provided documents in a foreign language. Because the applicant failed to submit 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. With the exception of the untranslated documents, 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 June 2001. She remained until or about March 2006. Accordingly, the applicant accrued over four years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to her marriage to a U.S. citizen. She 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 her last departure. The applicant does not contest her 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 husband asserts that he will endure extreme hardship if the applicant is not permitted to reside in the United States. *Statement from the Applicant's Husband* at 2-4. He explains that he came to the United States when he was age 16 in 1986, and he became a U.S. citizen on November 12, 1999. *Id.* at 1. He provides that he cannot reside far from the applicant, as they have a very happy family and she is the cornerstone of his home. *Id.* He states that he will suffer emotional hardship if he lives separately from the applicant and their two daughters. *Id.* at 2.

The applicant's husband asserts that the applicant has no place to live in Mexico. *Id.* He indicates that he is enduring financial hardship, as he must support the applicant in Mexico by sending funds to her, while meeting his own needs in the United States. *Id.* He provides that he cannot have his daughters reside with him in the United States because he must work. *Id.*

The applicant's husband states that he cannot relocate to Mexico, as there is not sufficient employment and salaries are low. *Id.* He explains that he and the applicant do not have family in Mexico who can assist them. *Id.* at 2-3. He notes that Mexico is insecure, including assaults on roads, highways, and houses, particularly against those from the United States. *Id.* at 4.

The applicant's husband states that their daughters are attached to the applicant. *Id.* at 3. He contends that their daughters will lose the opportunity of having a good education and stable future should they remain in Mexico. *Id.* He states that Mexico lacks adequate medical services to assist his family should they encounter an emergency there. *Id.*

The applicant's husband explains that he is disabled and he requires the applicant to help provide therapy for him. *Id.*

The applicant's husband states that he has experienced a loss of appetite, depression, sleep disturbances, stress, and heartburn. *Id.* He notes that he visited a doctor who diagnosed him with stress and heartburn due to separation from his family, for which he receives medication. *Id.*

The applicant's husband provides that his daughters will suffer emotional and developmental problems if they are deprived of his presence. *Id.* at 4.

The applicant's husband previously explained that he is self-employed as a car detailer, and that his earnings vary according to his workload. *Prior Statement from the Applicant's Husband*, undated. He stated that he is close with his daughters and the applicant, and that he would have no choice but to relocate to Mexico if the present waiver application is denied. *Id.* at 1. He indicated that he would be compelled to travel to the United States when he had work to perform, which would be onerous for him and his family. *Id.*

The applicant submits letters from her and her husband's friends who attest that the applicant's husband and daughters are enduring hardship due to the applicant's absence from the United States. *Letters from the Applicant's Friends*, dated March 19, 2007 and undated.

The applicant submits evidence that in 2005, her older daughter's pediatrician referred her for evaluation of her speech delay. The applicant also submits letters from one of her daughter's teachers, [REDACTED] who attests that the applicant's oldest daughter is not at her age-level in her learning skills due to her many absences. *Letter from the Applicant's Daughter's Teacher*, dated February 26, 2007. [REDACTED] commented that the applicant's daughter is having a difficult transition due to missing the applicant. *Id.* at 1.

The applicant provides a letter from her daughters' pediatrician, [REDACTED] who states that they have been seen multiple times over the previous year for nightmares, excessive crying, anger, and violent behavior directed toward themselves and their parents. *Letter from [REDACTED]* dated March 13, 2007. [REDACTED] provides that the applicant's daughters' behaviors are not medically-based, but that they are due to the stress of living separately from the applicant. *Id.* at 1. [REDACTED] explains that the applicant's daughter's are residing with the applicant's husband in the United States and only visiting the applicant. *Id.* She indicates that the applicant's daughters developed chronic diarrhea requiring multiple visits to physicians and medication during their last two-month visit to Mexico. *Id.* She notes that the applicant's older daughter was hospitalized in Mexico due to a severe infection. *Id.*

The applicant submits a report from her husband's physician, [REDACTED], in which [REDACTED] indicates that the applicant's husband experiences severe localized head pain in the right occipital regional resulting from an injury in 1998. *Report from [REDACTED]*, dated February 8, 2000. [REDACTED] states that he does not anticipate improvement in the applicant's husband's condition, and that he will need continued medical supervision three to four times per year in the form of office follow-ups and various treatment modalities including anti-inflammatory medication, physical therapy, and local nerve block in the right occipital region. *Id.* at 1. The applicant provides evidence that her husband has been designated as a person with a disability, as he received a disabled person placard from the California Department of Motor Vehicles on September 11, 2006. *Letter from California Department of Motor Vehicles*, dated September 11, 2006.

The applicant provides medical records for her husband that show that he was referred for counseling for March 14 and 16, 2007. *Applicant's Husband's Medical Records*, dated March 14 and 16, 2007. He has been prescribed medications, including Levoxyl and Zoloft. *Id.*

Upon review, the applicant has established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant has shown that her husband will experience extreme hardship should he remain in the United States without her. The record shows that the applicant's husband has a disability that requires continued medical care. [REDACTED] reported that the applicant's husband requires three to four doctor's evaluations per year and various treatment modalities including anti-inflammatory medication, physical therapy, and local nerve block in the right occipital region. The applicant's husband's physical disability and related medical needs constitute circumstances not ordinarily faced by individuals who reside apart from their families due to inadmissibility.

The applicant has provided medical records for her husband to further show that he has been referred for counseling and prescribed anti-depressant medication due to his emotional challenges. The applicant's husband expressed that he is enduring significant emotional difficulty due to the separation of his family and the hardships they are enduring, which is supported by the medical documentation in the record.

The record contains references to hardships experienced by the applicant's children. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act.

However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. Thus, hardship to the applicant's children will be examined to determine the impact it has on the applicant's husband.

The record shows that the applicant's children have encountered physical, emotional, and developmental challenges due to the separation of their family, requiring attention from school staff, medical care, and an incident of hospitalization. The applicant has shown that her daughters are experiencing significant difficulty which contributes substantially to her husband's emotional challenges.

All elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. The applicant has established that her husband will experience extreme hardship should he reside in the United States without her.

The applicant has also shown that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity. As discussed above, the applicant's husband has a physical disability that requires continued medical care, physical therapy, and medication. The record shows that he has been under the care of physicians in the United States who are familiar with his needs and condition. The applicant's husband would likely face challenges maintaining the continuity of his health care should he depart the United States and become separated from his current care providers. The applicant's husband's physical disability and related medical needs constitute circumstances not ordinarily faced by individuals who relocate abroad due to inadmissibility of a spouse.

It is noted that the applicant's husband's emotional challenges would not be alleviated by relocating to Mexico, as he, the applicant, and their children would continue to face hardship. The applicant's children would continue to face health challenges. The applicant's husband expressed concern regarding employment and economic conditions in Mexico, as well as the security of his family should they reside there. The applicant's husband has resided in the United States since 1986 when he was age 16, and the AAO acknowledges that unwillingly departing the United States after a lengthy residence often creates psychological difficulty.

All elements of hardship to the applicant's husband, should he relocate to Mexico, have been considered in aggregate. The applicant has shown that her husband will endure extreme hardship should he join her in Mexico to maintain family unity.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that denial of the present waiver application "will result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Morales*, 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 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 husband would experience extreme hardship if she is prohibited from residing in the United States; the applicant's U.S. citizen children will experience significant hardship if they reside in the United States without the applicant or reside in Mexico, and; the applicant has cared for her U.S. citizen children and cultivated a strong family unit.

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 eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of persuasion to show that she merits a favorable exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301. In this case, the applicant has met her burdens and has demonstrated that she is eligible for a waiver and she merits approval of her application.

**ORDER:** The appeal is sustained.