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

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APPLICATION:

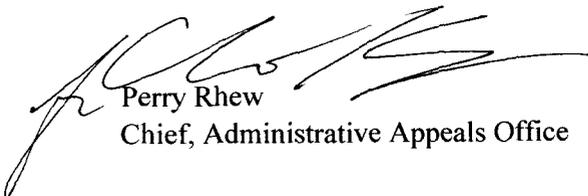
Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

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 his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated January 17, 2007.

On appeal, counsel asserts that the applicant's wife and children will suffer extreme hardship if the applicant is prohibited from returning to the United States. *Statement from Counsel on Form I-290B*, dated February 13, 2007.

The record contains a brief from counsel; statements from the applicant's wife, relatives of the applicant's wife, staff members of the applicant's children's schools, and a pastor; medical documentation for the applicant's wife; documentation of the applicant's wife's employment; a letter offering the applicant employment in the United States; photographs of the applicant and his family members; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate; copies of birth certificates for the applicant's two children; copies of U.S. birth records, lawful permanent resident cards, and a naturalization certificate for the applicant's wife's family members; documentation regarding the applicant's wife's ownership of a mobile home; documentation regarding the applicant's wife's outstanding debt regarding the purchase of an automobile; documentation of the applicant's wife's transfer of funds to the applicant in Mexico, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

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 1995. He remained until February 2006. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until February 2006, totaling over eight years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He 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 his last departure. The applicant does not contest his 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, counsel asserts that the applicant's wife and children will suffer extreme hardship if the applicant is prohibited from returning to the United States. *Statement from Counsel on Form I-290B*, dated February 13, 2007. Counsel states that the applicant and his wife began their lives together in 1995, and they were married in 2003. *Brief from Counsel*, at 2, dated February 13, 2007. Counsel provides that the applicant's children were born in 1997 and 2000, and that he is a good

father and husband. *Id.* Counsel indicates that the applicant's wife is one of 10 children and she has an abundance of family members residing in their area. *Id.* at 3. Counsel notes that the applicant's wife's mother brought her to the United States in 1982, and she and her children have never known life outside the United States. *Id.* Counsel states that the applicant and his wife purchased a mobile home and they attend a church every Sunday. *Id.* Counsel emphasizes that the applicant's wife has strong family ties to the United States and a deep support network, yet she has no such ties to Mexico. *Id.* at 6-7.

Counsel asserts that the applicant's wife is enduring significant economic hardship in the applicant's absence. *Id.* at 3. Counsel states that the applicant and his wife owe \$12,000 for an automobile the applicant's wife uses to commute to work. *Id.* Counsel provides that that applicant's wife must send funds to the applicant in Mexico, as he has been unable to find work for over a year. *Id.* Counsel contends that the applicant's wife will suffer greater financial hardship should she join the applicant in Mexico. *Id.* at 4. Counsel notes that the applicant has been offered employment in the United States, thus he would be able to provide a substantial economic contribution to his wife and children. *Id.* at 8.

Counsel notes that the applicant's wife has sought treatment for anxiety and depression, and that she receives antidepressant medication. *Id.* at 4. Counsel states that medical professionals confirm that the applicant's wife's emotional difficulty is the result of the applicant's absence. *Id.* Counsel asserts that family separation should be given significant weight in assessing the hardship to the applicant's wife. *Id.* at 7-8.

Counsel provides that the applicant's children are suffering emotional hardship due to the separation of their family, and that the applicant's wife sought counseling from their school to assist them. *Id.* at 4. Counsel asserts that the applicant's children will suffer academically should they relocate to Mexico and attend a school there. *Id.* at 4-5.

The applicant's wife states that she is taking medication for depression and high blood pressure. *Statement from the Applicant's Wife*, dated March 12, 2007. She reports that she has had many sleepless nights and she has lost over 20 pounds. *Prior Statement from the Applicant's Wife*, dated February 5, 2007. She provides that her two children are suffering emotional hardship due to witnessing her states of depression and frequent crying. *Id.* at 1.

The applicant's wife indicates that the applicant is also experiencing depression due to the fact that he has been unable to secure employment in Mexico and he has only seen his children twice since he departed the United States. *Statement from the Applicant's Wife* at 1. She provides that she struggles to support their two children while sending the applicant funds in Mexico. *Id.* The applicant's wife expresses that she and their two children are suffering extreme hardship due to their current circumstances. *Id.*

The applicant's wife provides that she has endured economic hardship in the applicant's absence, as she has fallen behind on her rent and she must pay her bills alone including a car payment. *Prior Statement from the Applicant's Wife* at 1.

The applicant's wife states that her health, employment, educational opportunities, economic solvency, and family ties prevent her from relocating to Mexico to join the applicant, yet she will be compelled to do so due to the strength of their marital bond and the bond between the applicant and their children. *Statement from the Applicant's Wife* at 1. She explains that she is the youngest sibling in her family and that she would endure significant emotional hardship should she be separated from her mother who resides in the United States. *Id.* She indicates that her children will suffer hardship if she must withdraw them from school in the United States and enroll them in an unfamiliar school in Mexico. *Prior Statement from the Applicant's Wife* at 1.

The applicant's wife asserts that the applicant will take care of their family and be a great contributor in the United States should he be permitted to return. *Id.* at 1-2. She indicated that the applicant used to take their children to school everyday and care for them after school. *Statement from the Applicant's Wife Submitted with Form I-601*, submitted February 24, 2006. She further provided that the applicant took their son to baseball practice, and that she is unable to do so. *Id.* at 1. She noted that she resides "25 minutes out of town," and that there are no neighbors around, making it unsafe for a woman and two children to reside alone. *Id.*

The applicant submits a letter from [REDACTED] at [REDACTED] in which [REDACTED] states that the applicant's wife has been a patient at their facility since January 2006. *Letter from [REDACTED]*, dated January 25, 2007. [REDACTED] reports that the applicant's wife suffers from anxiety and depression due to the applicant's absence. *Id.* at 1. [REDACTED] indicates that the applicant's wife takes antidepressant medication but that she continues to have anxiety and depression, she continues to lose weight, and she is having difficulty caring for her two children. *Id.*

The applicant submits a progress report from [REDACTED] that states that the applicant's wife was seen due to monthly headaches and that she was diagnosed with hypertension. *Wife's Medical Progress Note*, dated February 21, 2007.

The applicant provides a letter from an On-Site Manager, [REDACTED] with his wife's employer who states that his wife has been employed with the company since March 2004, most recently at their client site as a front office receptionist. *Letter from Applicant's Wife's Employer*, dated January 30, 2007. [REDACTED] reports that the applicant's wife is a valued employee, but that she has had difficulty with attendance due to taking time off work to address personal and immigration-related problems "because she is the sole provider for her family." *Id.* at 1.

The applicant provides statements from his wife's nieces, sister, mother, and friend. They attest that the applicant's wife and children are enduring emotional hardship due to separation from the applicant. *Letters from the Applicant's Wife's Friend and Family Members*, dated February 2-5, 2007. They provide that the applicant is close with his wife and children and that he is a good father, husband, and family member. *Id.*

The applicant submits a letter from a District School Psychologist for his children's school, [REDACTED], who attests that the applicant's wife sought psychological and counseling services through the school. *Letter from School Psychologist*, dated January 29, 2007. [REDACTED] states

that the applicant's wife reported that her children have experienced a deterioration in behavior, work production, cooperation, and emotional stability. *Id.* at 1. He indicates that he "cannot say with certainty that the absence of [the applicant] has been the sole cause of their changes, [but that he] can however as a professional state that such change might have very well of affected and contributed." *Id.* He posits that "the permanent absence of [the applicant] will very likely affect [the applicant's children] in a negative manner." *Id.*

The applicant provides a letter from his daughter's teacher, [REDACTED] who reports that the applicant's daughter is receiving extra help with reading both during and after school, and that she may not do well should she move to Mexico. *Letter from Applicant's Daughter's Teacher*, dated January 24, 2007. [REDACTED] notes that she has taught children who have come from Mexico, and that such children are far behind academically. *Id.* at 1.

Upon review, the applicant has shown that his wife will suffer extreme hardship should he be prohibited from returning to the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's wife expresses that she is enduring emotional hardship due to separation from the applicant. The AAO has carefully examined the documentation of the applicant's wife's medical treatment. The applicant provided reports that show that his wife sought regular medical assistance for anxiety and depression over the course of the year prior to filing the present appeal, and her treatment began prior to the date that the district director denied the present application for a waiver. The applicant's wife has taken medication to address her anxiety and depression, including Effexor and Xanax. [REDACTED] confirmed that the applicant's wife's symptoms have not been relieved by medication, and that she continues to lose weight and suffer depression and anxiety. [REDACTED] indicated that the applicant's wife is having difficulty caring for her two children due to her mental health status, and that her symptoms are tied to the applicant's absence from the United States.

The applicant's wife's sustained treatment for mental health conditions shows that she is enduring a greater level of emotional hardship than is commonly expected when family members reside apart due to inadmissibility.

The applicant's wife expressed that she is suffering other consequences due to the applicant's absence, including financial difficulty. The record indicates that the applicant's wife has been the family's sole provider since the applicant's departure and that she is responsible for payments on a significant automobile loan, that she regularly sends money to the applicant in Mexico, and that she faces the common and substantial expenses of a household with an adult and two young children. Moreover, the applicant's wife's employer has stated that continued absences could result in her termination.

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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the

children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. The record shows that the applicant's children are suffering emotional difficulty due to separation from him, and that his wife sought counseling for her children through their school. The AAO gives due consideration to the additional hardship the applicant's wife faces due to the psychological challenges of her children.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has shown that his wife will endure extreme hardship should she remain in the United States without him.

The applicant has also shown that his wife will suffer extreme hardship should she relocate to Mexico. As discussed above, the applicant's wife is suffering from depression and anxiety for which she has received treatment in the United States. Should she depart, she will be separated from the care providers who presently monitor and treat her condition. While [REDACTED] posits that the applicant's wife's mental health condition is largely a result of separation from the applicant, it is evident that she would continue to endure emotional stressors should she relocate with her children to Mexico to join the applicant.

The applicant's wife has extensive ties to the United States. She has resided in the country since 1982 when she was approximately seven years old. She provided that she is the youngest of 10 children, all of who reside in the United States along with her mother. Thus, the applicant's wife has a strong network of family support in the United States from which she would become separated should she relocate to Mexico.

The applicant's wife has consistent employment in the United States, and she would face the loss of her position should she depart. The record also indicates that the applicant has been unable to find employment in Mexico. Thus, the applicant's wife would likely endure financial challenges should she reside in Mexico with the applicant and their two children.

The applicant submitted documentation to support that his children would endure hardship should they withdraw from their school programs in the United States and relocate to Mexico. [REDACTED] noted that the applicant's daughter receives extra help with reading both during and after school, yet that children who come to the United States from Mexico are far behind academically. It is understood that detriment to the applicant's children would create additional emotional hardship for the applicant's wife.

All elements of hardship to the applicant's wife, should she relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant has shown that his wife will suffer extreme hardship should she join him abroad. This finding is based largely on the applicant's wife's documented mental health challenges and her long duration of residence in the United States totaling approximately 28 years.

Accordingly, the applicant has shown by a preponderance of the evidence that denial of the present waiver application “would result in extreme hardship” to his wife, 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 wife would experience extreme hardship if he 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 him or relocate to Mexico; the record supports that the applicant has acted as a good husband, father, and community member in the United States, and; the applicant has shown a propensity to work and support his family in the United States.

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 that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he is eligible for a waiver and that he merits approval of his application.

ORDER: The appeal is sustained.