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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
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Services



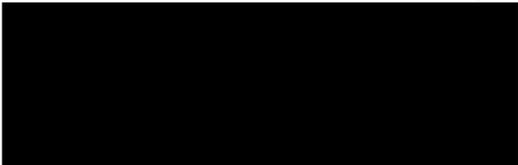
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FILE: AAO 08 109 50020 Office: MEXICO CITY  Date: **AUG 05 2010**
CDJ 2004 738 088 (relates)

IN RE: Applicant: 

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)

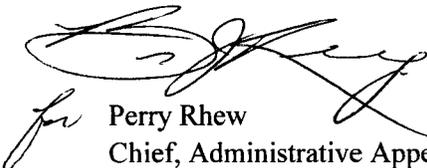
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
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 waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that 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 in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with his United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 6, 2007.

On appeal, counsel states, generally, that the director failed to properly evaluate the evidence provided which establishes the "extreme nature of the hardship" the applicant's spouse would suffer. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record includes two statements from the applicant's wife detailing the hardship claim; a psychological evaluation describing the impact of the applicant's separation on the applicant's spouse and children; financial documents, including bills and tax returns; counsel's brief; and, country conditions reports on Mexico. *See statements from Karla Tejada; Psychological Evaluation Report from Sandra G. Baca, PsyD, LMFT; and, Counsel's brief and attachments* submitted with the appeal. 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:

(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

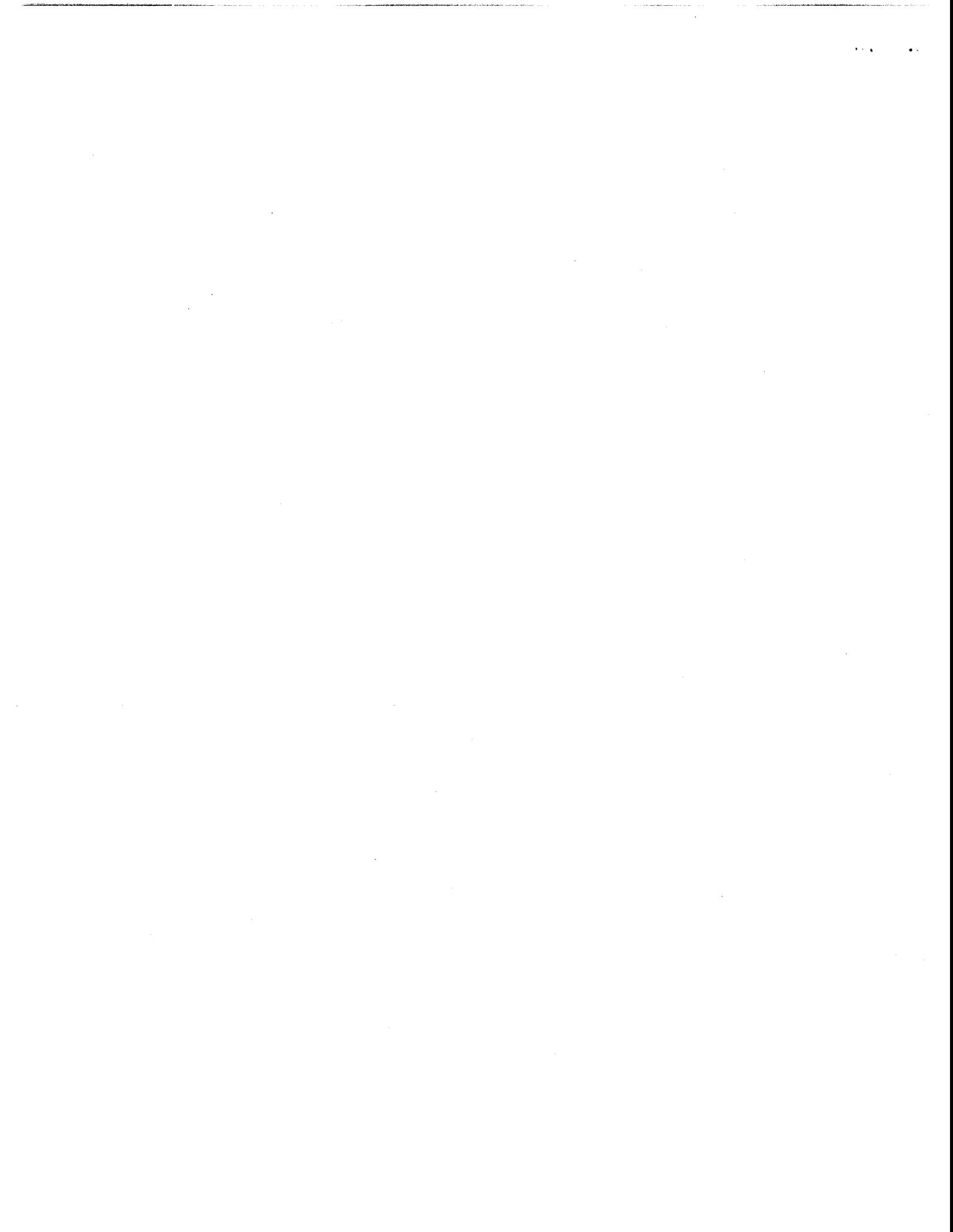
of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States in 1993, without inspection, and remained in an unlawful status until November 13, 2006, when he departed for Mexico. On December 3, 2003, the applicant's wife filed a Form I-130 on behalf of the applicant. On July 28, 2004, the applicant's Form I-130 was approved. On December 5, 2006, the applicant filed a Form I-601. On September 6, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the statute, until November 13, 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his November 2006 departure from the United States. 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse. 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).

The concept of extreme hardship to a qualifying relative "is not...fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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 would relocate. *Id.* at 566. The BIA has also held:

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In her statements (submitted with the Form I-601, and on appeal), the applicant’s wife states her family needs the applicant in the United States because his absence has caused financial and emotional hardship, and will affect their way of life and their two young children. The applicant’s wife states that since her husband’s absence her “financial stability is falling apart” because her husband was the primary earner in the family, and due to a work-related injury she is not employed, and she cannot manage the household expenses and their debts, including the mortgage obligations. In her Psychological Evaluation Report, dated September 21, 2007, [REDACTED] of the [REDACTED] [REDACTED] states that the applicant’s spouse was injured on the job just three months after she started working as a hospital security guard, and that at the time of her September 21, 2007 evaluation, she was not permitted to work. [REDACTED] also states that the applicant’s spouse is under a heavy debt burden from mortgages and household expenses, that she has sought the advice of a bankruptcy attorney, and “It is estimated she has \$30,000 in bills that are past due.” It is noted that the record includes various invoices and notices, including delinquent notices, and statements from her

mortgage company, which reflects these obligations. It is noted that each item by itself requires a payment which would substantially deplete the applicant's spouse's limited disability income, and impact on her ability to provide for the care of her family, including her two young children.

The applicant's spouse further states that as a result of separation from her husband, caring for the children without her husband has left their lives "totally disrupted" leaving her "with a sense of emptiness." In her assessment of the applicant's spouse's situation, [REDACTED] concludes that "she was depressed" and noted that she reported having "problems sleeping and eating and at times scary thoughts," and that "she expressed fear that if the Department of Children and Family Services found out about her financial situation, they would remove the children from her home and place them in a foster home."

The AAO notes that the applicant's children may experience some hardship because the applicant is in Mexico; however, the applicant's children are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. Although hardship to the applicant's children will not be considered, the AAO finds that such hardship will cause severe emotional and financial hardship to the applicant's spouse, as she would be left alone to care for the two young children, and at the same time provide for the family and manage the family debt, including the payment of mortgages, on her disability income. The entire parental burden of raising the children, and having to pay these expenses from her low paying income, would fall solely on the applicant's spouse. In this case, the AAO finds that the level of hardship the applicant's spouse would endure is beyond what would normally be expected of families who are separated.

The applicant's spouse states that she and her children would suffer extreme hardship in Mexico as the loss of her job would cause her financial hardship. She also states that she was born in El Salvador and she and her children would be discriminated against because Mexicans dislike El Salvadorans. The applicant's spouse also states that her family are all legal permanent residents and leaving her parents "would crush [her] emotionally," and, she would have "no future" in Mexico. The applicant's spouse also states that her daughter does not speak Spanish well and that this language limitation would affect her daughter in Mexico. Counsel states that "the Applicant is aware of the unfavorable country conditions that would severely impact his children living in Mexico on a permanent basis... Further, the economic and medical conditions do not stand comparison to those in the United States," and the applicant and his spouse would be "living in constant fear that their children will contract an extremely dangerous [disease] that could not be cured by the means available in Mexico."

The AAO notes that recently the United States Department of State, *Bureau of Consular Affairs*, warned of dangers in Mexico. See, United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, May 10, 2010.

The record reflects that the applicant's spouse would be forced to relocate to a country to which she is not familiar. She would have to leave her support network, her income source, and her home and the family's property investments, and she would be concerned about her and her children's safety, health, academics, and financial well-being at all times while in Mexico. It has thus been established that the

applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his United States citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's United States citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and U.S. citizen children would face if the applicant were to relocate abroad, regardless of whether they relocate to Mexico or remain in the United States, and the passage of more than sixteen years since the applicant's entry to the United States without inspection. The unfavorable factors in this matter are the applicant's entry to the United States without inspection and his unlawful residence in the United States, and a conviction for possession of stolen property. It is noted that the imposition of sentence for this conviction was suspended. This negative factor, however, is not enough to outweigh the positive factors.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.

