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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

#2

#6

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 19 2010

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.

Ellen C. Johnson

Perry Rhew
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 September 14, 2006.

On appeal the applicant asserts that his wife is suffering extreme hardship since he returned to Mexico, including emotional hardship due to separation from her family in the United States and their son's frequent illnesses when she resided with him in Mexico in 2006. *See Notice of Appeal to the AAO (Form I-290B).* He further states that his wife is suffering from depression and must take medication for this condition. *Notice of Appeal to the AAO.* In support of the appeal the applicant submitted a letter from his wife's doctor in Colorado and letters and prescriptions from doctors in Mexico who have treated his son. 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 twenty-eight year-old native and citizen of Mexico who initially entered the United States without inspection in March 2000 and remained until October 2005, when he returned 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-eight year-old native and citizen of the United States whom he married on May 11, 2002. The applicant currently resides in Guerrero, Chihuahua, Mexico and his wife resides in Denver, Colorado.

The applicant asserts that his wife and son relocated to Mexico in order keep their family together, and that she is suffering from depression due to being separated from her family and having to live with his family in a rural area where there is no work. *See Notice of Appeal to the AAO.* He states,

> had to leave all of her family to go to the rural area where family lives in Calera Gro. Chihuahua Mexico. There are only about ten houses there. has no work there, and they are staying with . . There is no work where we live and we have no money to be able to go to another place in Mexico, find a home and find work. *Notice of Appeal to the AAO.*

He further states that their son is continually having gastrointestinal problems where they are living, and in support of this assertion submitted copies of prescription for their son and notes from doctors staring that in 2006, when he was two years old, he was treated four times for infectious gastroenteritis.

The AAO additionally takes note that the U.S. Department of State has recently issued a travel alert with information for U.S. Citizens traveling to Mexico. The travel alert states:

> While millions of U.S. citizens safely visit Mexico each year (including tens of thousands who cross the land border every day for study, tourism or business), violence in the country has increased. It is imperative that travelers understand the risks of travel to Mexico, how best to avoid dangerous situations, and who to contact if one becomes a crime victim. . .
>
> Recent violent attacks have caused the U.S. Embassy to urge U.S. citizens to delay unnecessary travel to parts of Michoacán and Chihuahua (see details below) and advise U.S. citizens residing or traveling in those areas to exercise extreme caution. . .
>
> Although the greatest increase in violence has occurred on the Mexican side of the U.S. border, U.S. citizens traveling throughout Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times. Bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. In recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved. . . .

> 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 towns and cities across Mexico, but occur mostly in northern Mexico, including Tijuana, Chihuahua City, Monterrey and Ciudad Juarez. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. . . .
>
> The situation in the state of Chihuahua including Ciudad Juarez is of special concern. The U.S. Consulate General recommends that American citizens defer non-essential travel to the Guadalupe Bravo area southeast of Ciudad Juarez and to the northwest quarter of the state of Chihuahua including the city of Nuevo Casas Grandes and surrounding communities. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Alert,* dated August 20, 2009.

A letter from a psychiatrist states that the applicant's wife was suffering from major depression and was treated with medication before relocating to Mexico in 2006. *See letter from* [redacted] *M.D.* dated September 26, 2006. The record further indicates that the applicant's wife, who was born in the United States, relocated to Mexico to reside with the applicant in 2006 and during that time separation from her parents contributed to her depression. Further, she resided in the home of the applicant's parents in a rural area of the state of Chihuahua because she and the applicant had no place else to live, and her son suffered from frequent illnesses while they lived there. When considered in the aggregate, the emotional and economic hardships that would result from separation from her family, moving to a rural area where she and the applicant are not employed, and having to adjust to conditions in Mexico combined with the general hardship resulting from the rise of violent crime in Mexico, including the state of Chihuahua, would rise to the level of extreme hardship if the applicant's wife again moved to Mexico to reside with him.

The applicant states that his wife was suffering from depression when she was in Mexico. A letter from her psychiatrist states that she was diagnosed with major depression and prescribed medication in April 2006 and that her depressive symptoms returned in September 2006 when she came back to the United States because of her great disappointment over denial of the waiver application. *See letter from* [redacted], *M.D.* Dr. [redacted] further states, "She is unable to work, and has been living with her mother. A permanent reunion with her husband would greatly improve her mental health." *See letter from* [redacted], *M.D.* The applicant's wife was suffering from depression after he departed the United States in October 2005, and she moved there with her son rather than live apart from him in the United States. According to her psychiatrist, her depressive symptoms returned when the waiver application was denied and she was unable to work when she returned to the United States. The emotional hardship of being separated from her husband has caused the applicant's wife to suffer from major depression rendering her unable to work, which amounts to extreme hardship beyond that which would normally be expected as a result of inadmissibility.

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 2000 to October 2005. The favorable factors in the present case are the extreme hardship to the applicant's wife and son and the applicant's lack of a criminal record or other immigration violations.

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.