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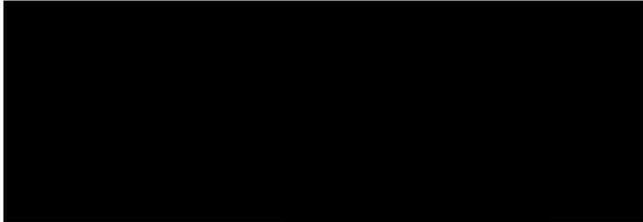
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

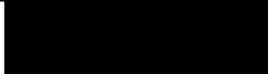


U.S. Citizenship
and Immigration
Services

H6



FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date FEB 24 2010

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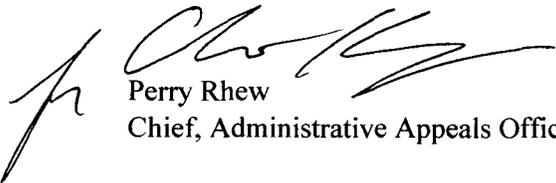
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

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. 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 husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 17, 2006.

On appeal, the applicant's husband asserts that he will experience hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband*, submitted November 30, 2006.

The record contains statements from the applicant, the applicant's husband, and the applicant's son; medical documentation for the applicant's husband and son; documentation regarding the applicant's husband's benefits from the U.S. Department of Veterans Affairs; a copy of the applicant's son's birth certificate; a copy of the applicant's marriage certificate; educational documents for the applicant's son; reports on conditions in Mexico, and; documentation 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 1991. She remained until approximately March 2006. Thus, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until March 2006, totaling over nine years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. 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 pursuant to section 212(i) of the Act. 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 experience hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband* at 1. The applicant's husband explains that he suffers from diabetes and high blood pressure, and that the applicant has acted as his personal nurse and he needs her due to his current health condition. *Id.*; *Applicant's Husband's Letter in support of Appeal*, undated. The applicant's husband expresses that he is close with the applicant and that she has taken good care of him and her son. *Applicant's Husband's Letter in support of Appeal* at 1-2.

He states that he is caring for the applicant's 14-year-old son who has endured serious emotional hardship due to separation from the applicant. *Id.* at 1. He indicates that the applicant's son is close to the point of suicide, and that he requires constant care. *Id.*

The applicant's husband asserts that the applicant's son needs the applicant's presence in the United States for emotional support and to encourage him in his educational pursuits. *Id.* at 1-2. He explains that the applicant's son has suffered serious emotional hardship due to separation from the applicant, and that he attempted suicide. *Id.* at 2. He explains that the applicant's son's grades have severely dropped since the applicant departed. *Id.* He previously stated that he and the applicant would have difficulty affording a school in Mexico for the applicant's son that is close to the quality of school he attends presently. *Statement from the Applicant's Husband Submitted with Form I-601*, dated March 10, 2006.

The applicant's son states that the applicant is his closest family member because he was never able to have a relationship with his biological father. *Statement from the Applicant's Son*, dated April 19, 2007. He explains that he has become very depressed since the applicant's departure. *Id.* at 1.

The applicant states that her husband and son are experiencing extreme hardship due to her absence, and that their hardship is greater than the normal economic and social disruptions involved in inadmissibility. *Statement from the Applicant*, dated April 2, 2007.

The applicant submits extensive documentation of her husband's medical care that shows that he suffers from diabetes mellitus type 2 and high blood pressure. *Medical documentation for the Applicant's Husband*, dated in 2006 and 2007. The applicant's husband has been under the care of multiple medical professionals in the United States. *Id.* The applicant's husband takes insulin, and he has taken numerous other medications and undergone procedures to monitor his health and address complications related to his diabetes. *Id.* A medical professional requested that the applicant's husband have the applicant monitor his breathing while he sleeps, but he has been unable to do so due to the applicant's absence. *Applicant's Husband's Medical Record Entry from [REDACTED]* dated May 30, 2006; *Applicant's Husband's Medical Record Entry from [REDACTED]* dated August 31, 2006.

The applicant provides documentation of her son's medical care that shows that he has suffered from asthma, depression, and fatigue. *Medical documentation for the Applicant's Son*, dated August – October 2006. The applicant's son expressed a desire to stab himself, and he was referred to a psychiatrist. *Letter from [REDACTED]*, dated August 31, 2006.

The applicant provided reports on conditions in Mexico, including the presence of poverty and security risks.

Upon review, the applicant has established that her husband will suffer extreme hardship if she is prohibited from residing in the United States. The record shows that the applicant's husband suffers from diabetes and associated complications, as well as other health problems. He has received consistent care in the United States from multiple medical professionals, and he has taken numerous medications. He receives medical coverage for his care in the United States through his benefits with the U.S. Department of Veterans Affairs. It is evident that the applicant's husband would endure physical and emotional hardship should he relocate to Mexico and become separated from

the medical care providers who presently manage his health care. Further, the record shows that the applicant's husband's physicians have requested that the applicant participate in monitoring her husband's breathing while he sleeps, thus should her husband remain in the United States without her she will be unable to perform this service.

The applicant's husband's diabetes and related health problems, and the resulting need for consistent medical care, constitute unusual circumstances not ordinarily faced by the spouses of those deemed inadmissible.

The record contains references to hardships experienced by the applicant's son. Direct hardship to an applicant's child 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 son will be examined to determine the impact it has on the applicant's husband.

The record clearly reflects that the applicant's son has suffered significant emotional hardship due to separation from the applicant. The applicant has provided documentation to show that her son has been treated for psychiatric problems, and that he expressed a credible desire to injure himself. The applicant's husband explained that he has had difficulty caring for the applicant's son alone due to her son's grave reaction to the applicant's absence and his elevated need for parental guidance. It is evident that the applicant's husband is facing unusual hardship in caring for the applicant's son that is not commonly experienced by spouses who remain in the United States with an applicant's child.

The applicant's husband explained that his family would face other hardships related to the applicant's son should they relocate to Mexico. Specifically, he noted that they would have difficulty funding an education that is comparable to that which her son receives in the United States. Thus, the applicant's husband would encounter some emotional hardship should they applicant's son lose his educational opportunities in the United States.

Federal court and administrative decisions have 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). However, the AAO finds that the applicant's husband's and son's health problems present unusual circumstances for her husband that go beyond the challenges commonly experienced when families are separated or relocate due to inadmissibility.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that her husband will experience extreme hardship should the present waiver application be denied, whether he relocates to Mexico or remains in the United States with the applicant's son.

In *Matter of Mendez-Moralez*, 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 son will experience significant hardship if he resides in the United States without the applicant or relocates to Mexico, and; the applicant has cared for her U.S. citizen husband and son 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 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 her burden that she is eligible for a waiver and she merits approval of her application.

ORDER: The appeal is sustained.