

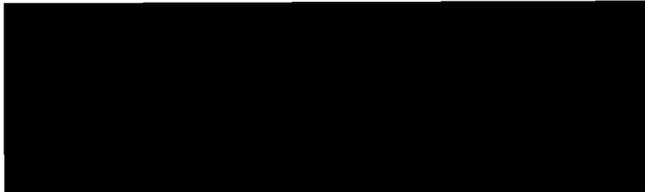
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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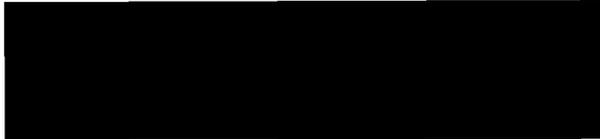
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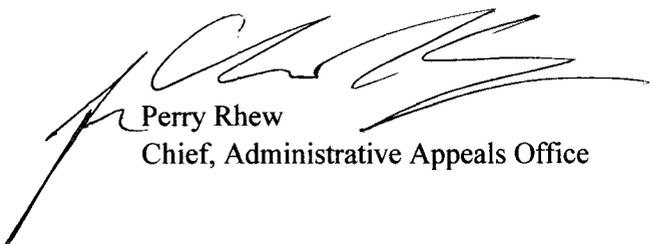
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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.

The district director found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 17, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, received January 19, 2007.

The record contains a brief from counsel; a copy of the applicant's wife's U.S. passport; statements from the applicant's wife, the applicant's wife's employer, the applicant's mother-in-law, the applicant's sister-in-law, a coworker of the applicant's wife, and friends of the applicant and his wife; tax documents for the applicant and his wife; documentation regarding the applicant's wife's income and expenses; medical documentation for the applicant's wife; documentation of the applicant's and his wife's health insurance; copies of photographs of the applicant and his family members; documentation regarding the applicant's wife's pursuit of a daycare license, 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 April 2002. He remained until approximately August 2005. Thus, the applicant accrued over three years of unlawful presence in the United States. He now seeks admission in K-3 status in order to join his U.S. citizen wife. 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 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, counsel asserts that the applicant's wife will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 2. Counsel states that the applicant's wife has resided in the United States for most of her life, since the age of eight years, and that most of her family members reside in the United States as well, including her mother, sister, niece, aunts, uncles, and cousins. *Id.* at 3-4. Counsel provides that the applicant's wife will relocate to Mexico if the applicant is prohibited from returning, thus she will be separated from her family and friends in the United States. *Id.* at 4. Counsel notes that the applicant's wife has only one grandmother in Mexico. *Id.*

Counsel asserts that conditions in Mexico are considerably less favorable than in the United States, and that the applicant's wife would face a financial impact that would be extreme. *Id.* Counsel explains that the applicant and his wife have had steady employment in the United States, but that they would face low wages and a lack of employment opportunities in Mexico. *Id.* at 5. Counsel states that the applicant's mother-in-law gave the applicant and his wife a house, conditioned on their continued payment of the mortgage. *Id.* at 6. Counsel asserts that the applicant's wife will have difficulty making the monthly mortgage payments if the applicant is not permitted to return to the United States and resume working. *Id.* Counsel further contends that the applicant's wife will face the cost of traveling between the United States and Mexico should she remain in the United States without the applicant. *Id.* Counsel states that the applicant found employment in Mexico, but that he works 12-18 hours per day and earns the equivalent of less than \$220 biweekly. *Id.* at 7.

Counsel states that the applicant's wife would face security concerns in Mexico due to a high crime rate and inadequate law enforcement. *Id.* at 8-9.

Counsel asserts that the applicant's wife will lack adequate access to medical services. *Id.* at 9. Counsel states that the applicant's wife will reside in Morelos, Mexico should she relocate there, and that she would have to travel up to two hours to Mexico City to obtain sufficient services. *Id.* at 10. Counsel notes that the applicant's wife has received treatment from [REDACTED] in Chicago since December 2005. *Id.* Counsel provides that [REDACTED] was concerned regarding the applicant's wife's report of stomach pains, as her father died of stomach cancer. *Id.* Counsel notes that [REDACTED] referred the applicant's wife to obtain a gastroscopy. *Id.* Counsel names other conditions for which the applicant's wife received treatment, including swelling on her scalp, growths on her neck, heartburn, constipation, abdominal pain, and nausea. *Id.* Counsel notes that the applicant's wife was referred to a surgeon for a soft tissue mass excision biopsy and a colonoscopy. *Id.*

Counsel states that in December 2006 [REDACTED] diagnosed the applicant's wife with Major Depression for which he prescribed Zoloft, Ambien, and referred her to a psychiatrist. *Id.* at 11. Counsel indicates that a psychiatrist, [REDACTED], is treating the applicant's wife for Major Depression and Panic Disorder with medication and weekly psychotherapy. *Id.*

Counsel asserts that the applicant's wife requires continued medical care, which is funded by her health insurance in the United States. *Id.* at 12. He asserts that she would be deprived of adequate care should she relocate to Mexico with the applicant. *Id.*

Counsel asserts that the applicant's wife will suffer an extreme situation if she remains in the United States without the applicant, as she faces major depression, panic disorder, and other medical conditions without his support. *Id.*

Counsel explains that the applicant's wife lost her first boyfriend in 1993 when he committed suicide. *Id.* at 13. Counsel states that the applicant's wife's father died shortly thereafter from stomach cancer. *Id.* Counsel indicates that the applicant's wife dated another individual for approximately four years, but that he and her younger brother died in a car accident in January 2000.

*Id.* Counsel states that the applicant met his wife in 2003, and that she would face significant emotional hardship should she continue to be separated from him. *Id.*

Counsel notes that the applicant's wife's work performance has deteriorated due to her emotional distress. *Id.* at 13-14.

Counsel further asserts that the applicant received ineffective assistance from his prior representative who failed to properly advise him of the evidentiary requirements of an application for a waiver under section 212(a)(9)(B)(v) of the Act. *Id.* at 16-19.

The applicant's wife states that she is suffering significant emotional, psychological, and financial hardship in the applicant's absence. *Statement from the Applicant's Wife*, dated December 15, 2006. She explains her history, including the facts that her parents relocated her family from Mexico to the United States when she was eight years old to seek a better life. *Id.* at 1. She states that she suffered emotionally traumatic events in her past. *Id.* She explains that her boyfriend committed suicide when she was 14 years old which devastated her. *Id.* at 2. She states that she became involved with another boy, [REDACTED], after several months who was very supportive for her. *Id.* The applicant's wife explains that in the Summer of the same year her father was diagnosed with cancer which was very difficult for her family. *Id.* at 2-3. She states that her father died on October 26, 1993, leaving her mother unemployed with her and her younger brother and sister. *Id.* at 3. She explains that her younger brother and [REDACTED] died in a car accident in January 2000, days after her brother graduated from high school. *Id.* at 3-4. The applicant's wife states that she had dated [REDACTED] for over four years and that they planned to get married, and after losing two boyfriends she "lost interest in love." *Id.* at 4.

The applicant's wife describes her relationship with the applicant, including that they met in 2003 and both worked hard to build a life in the United States. *Id.* at 5-6. She provides that she is working on completing a college degree and that the applicant has been supportive of her goals. *Id.* at 6-7. She explains that the applicant is a loving person with her, her family, and her friends, and that he supports her financially, psychologically, and emotionally. *Id.* at 7.

The applicant's wife states that she travels to Mexico to visit the applicant approximately once every two months, which has caused her to take leave without pay from work. *Id.* at 8. She provides that her work performance has suffered and she is enduring physical and mental health consequences. *Id.* at 8-10. She describes the care she receives from a psychiatrist, including the prescription of medication to treat her depression and sleeping problems. *Id.* at 8-9.

The applicant's wife states that she would have little chance to succeed in Mexico, as she would not be able to pursue her education and career due to the lack of educational opportunities that allow financing of tuition and costs. *Id.* at 11. She notes that the Spanish she speaks is not the same as that spoken in Mexico. *Id.* She states that she has educational debt to repay in the United States, and she would be unable to do so in Mexico. *Id.* at 12. She indicates that the applicant works 12 to 18 hours per day in Mexico with little compensation, thus they would experience economic hardship. *Id.* She expresses that she would face emotional hardship due to separation from her family members in the United States. *Id.*

The applicant submits a record of his wife's medical history, including documentation to show that [REDACTED] diagnosed her with Major Depression for which he prescribed Zoloft and Ambien, and referred her to a psychiatrist. *Record of Applicant's Wife's Medical History*, dated December 3, 2005 to December 18, 2006. The applicant provides a letter from [REDACTED] in which he states that the applicant's wife is prone to depression due to prior losses, and that the applicant's absence has caused significant depression and anxiety necessitating psychiatric intervention and counseling therapy. *Letter from [REDACTED]* dated December 4, 2006. The applicant submits a letter from [REDACTED], who provides that the applicant's wife is under his care for Major Depression and Panic Disorder. *Letter from [REDACTED]*, dated December 21, 2006. [REDACTED] states that the applicant's wife requires medication and psychotherapy on a weekly basis. *Id.* at 1. He posits that the applicant's wife's difficulty is exacerbated by her separation from the applicant. *Id.*

The applicant submits documentation to show that his wife has medical insurance in the United States. The applicant further provides letters from his wife's employer that show that his wife's performance and attendance have decreased, and that she was issued a reprimand. *Letters from Chicago Public Library*, dated December 4 and 19, 2006.

The applicant provides numerous letters from friends and relatives of his wife who attest to his wife's prior losses and emotional challenges, and the emotional and economic hardship she is presently experiencing.

Upon review, the applicant has established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The record contains detailed information about the applicant's wife's prior life experiences that have caused serious emotional trauma for her, including the death of her father, the suicide of her first boyfriend, and the accidental death of her younger brother her subsequent boyfriend. [REDACTED] states that the applicant's wife is prone to depression due to prior losses. The applicant's wife has been treated by [REDACTED] for major depression, and she is under the care of [REDACTED] for major depression and panic disorder. She receives medication and psychotherapy to cope with her psychological challenges. The applicant's wife's history of significant emotional stressors and present need for mental health services constitute unusual circumstances that are not ordinarily faced by the spouses of those who reside abroad due to inadmissibility.

The applicant's wife faces significant difficulty should she remain in the United States without the applicant. She would endure the emotional hardship of separation from the applicant. She would suffer economic challenges due to the loss of the applicant's income and the expenses of traveling to Mexico. The record shows that the applicant's wife's emotional difficulty has impacted her job performance and ability to focus, which further threatens her educational, career, and personal goals. Given the applicant's wife's history and present mental status, the record shows that coping with these difficulties presents greater hardship to her than would commonly be experienced when spouses reside apart due to inadmissibility.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will suffer extreme hardship should he be prohibited from returning to the United States and she remain without him.

The applicant has also shown that his wife will suffer extreme hardship should she relocate to Mexico to join him. As noted above, the applicant's wife is under the care of a psychiatrist, and she requires weekly treatment and medication. Should she relocate to Mexico, she will be separated from the doctors who treat her in the United States. The applicant has provided documentation to show that his wife has health insurance in the United States. She works for a Chicago public library and the coverage is offered through the City of Chicago. Accordingly, she would likely lose her coverage should she end her employment in the United States and move to Mexico. Thus, relocation to Mexico would likely disrupt the applicant's wife's needed medical services.

It is noted that the applicant's wife's present psychological challenges are closely associated with her separation from the applicant. However, the applicant's wife faces hardship should she join him in Mexico, including the loss of her steady employment, separation from close family members and friends, economic hardship due to a lack of employment opportunities in Mexico, disruption in her educational and career goals, and emotional hardship due to concerns for her and the applicant's personal safety. Such challenges are typical when an individual relocates abroad due to the inadmissibility of a spouse. However, the record supports that the applicant's wife's ability to cope with these difficulties is hindered by her history of loss and her resulting predisposition to depression.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will suffer extreme hardship should she relocate to Mexico to join him.

U.S. court 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 (9<sup>th</sup> Cir. 1991). However, as discussed above, the AAO finds that the applicant's wife's history and present mental health needs present unusual circumstances for her that go beyond the challenges commonly experienced when families are separated or relocate due to inadmissibility. Thus, 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 has supported his wife emotionally and cultivated a strong family unit; the applicant has shown a propensity to work and pay taxes in the United States, and; the applicant has engaged his community through religious activities.

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 he merits approval of his application.

**ORDER:** The appeal is sustained.