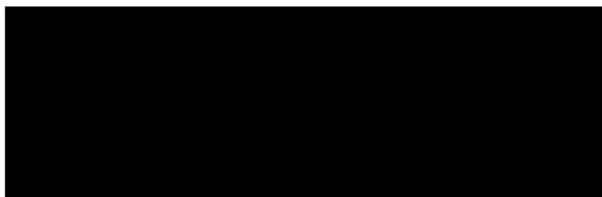


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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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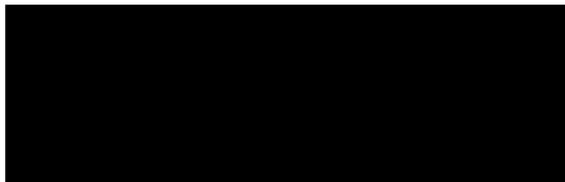
IN RE:



APPLICATION:

Application for Waiver of Ground 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:

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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a 49-year-old 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. The applicant is married to a lawful permanent resident of the United States, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and family in the United States.

The District Director found that the applicant failed to establish extreme hardship to her permanent resident spouse, and denied the application accordingly. *Decision of the District Director*, dated Jan. 29, 2007. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband. *See Form I-290B, Notice of Appeal*, dated Feb. 27, 2007.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married in Mexico on September 8, 1979; copies of the birth certificates for the couple's U.S. citizen son and daughter; a copy of the permanent resident card for the couple's son Arturo; copies of the birth certificates for the couple's U.S. citizen grandchildren; several statements and letters from the applicant's husband; letters from all three of the applicant's adult children; family photographs; income tax documentation; documents relating to the couple's home in Houston, Texas; and a brief in support of the appeal.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). The entire record was 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 [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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in or around January, 1983. *See Form I-601, Application for Waiver of Ground of Excludability*, filed Feb. 9, 2006. The applicant's daughter filed a Petition for Alien Relative (Form I-130), on her behalf, which U.S. Citizenship and Immigration Services approved on December 14, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in February, 2006. *See Form I-601, supra*. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has

¹ The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.²

The AAO finds that the applicant has established that the denial of a waiver imposes extreme hardship on her spouse if he remains in the United States without her, or if her spouse relocates to Mexico.

² The District Director erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO is sustaining this appeal after a de novo review, this error is harmless.

The record reflects that the applicant's spouse, [REDACTED] is a 49-year-old native of Mexico and a lawful permanent resident of the United States. *See Permanent Resident Card for [REDACTED]* Mr. [REDACTED] has resided in the United States for over 25 years. *See Brief on Appeal*. The applicant and her husband married in 1979, when they were both 19 years old. *See Marriage Certificate*. The couple has three adult children, and four U.S. citizen grandchildren. *See Birth Certificates*. The applicant's spouse asserts that he is suffering extreme hardship as a result of the denial of the waiver.

In support of the hardship claim, Mr. [REDACTED] states that he is suffering extreme emotional distress without the presence of his long-time partner. *See Statement of Jose A. Esparza*. Mr. [REDACTED] relates how the applicant fostered extremely close family ties with their children and grandchildren, by ensuring that the entire family spent every weekend together. *Id.* In addition to sharing family meals, the family attended church together on Sundays. *Id.* Mr. [REDACTED] claims that without the applicant, what was once a "united and close" family is not the same. *Id.* Mr. [REDACTED] states that he has suffered from depression and stress since the applicant's departure from the United States in 2006. *Id.* He reports weight loss, sleeplessness, and notes that he is "not the same person anymore," and no longer has a reason to smile. *Id.* The applicant's spouse states that he is "alive from the outside but from the inside [he] is dead." *Id.* The applicant's children corroborate the severe impact of the separation on Mr. [REDACTED]. *See, e.g., Letter from [REDACTED]*. The record reflects that family separation also has seriously impacted the lives of the applicant's adult children, which in turn causes hardship to the applicant's spouse. *Id.; see also Letters from [REDACTED]* Additionally, Mr. [REDACTED] and the children claim that the applicant is suffering from depression, living by herself in Mexico, missing all of the important family events and that knowledge of the applicant's depression further exacerbates her husband's emotional distress. *See Letters from Applicant's Sons and Daughter; Statement of [REDACTED]*

The record reflects that Mr. [REDACTED] has worked in the printing business since at least 1992, and the applicant has been a full time homemaker. *See Income Tax Records*. The couple's adjusted gross income in 2006 was \$36,643. *Id.* The mortgage on the couple's home is \$1,674 per month, and Mr. [REDACTED] must also provide for an apartment and living expenses for the applicant in Mexico. *See Mortgage Statement; Statements of the Applicant's Husband and Daughter*. The relevant evidence indicates that the expenses of two households, along with the trips to Mexico to visit the applicant, have caused financial hardship to Mr. [REDACTED]

Here, the applicant's spouse has shown that the multiple hardships caused by the separation from his wife, when considered in the aggregate, constitute extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383. Although the separation of family members and financial difficulties alone do not establish extreme hardship, the psychological impact of Mr. [REDACTED] prolonged separation from his wife and partner of over 30 years, and the impact of separation on this extremely close-knit family, take this case beyond the ordinary hardships to be expected when one family member is inadmissible. The impact of family separation is particularly acute given the length of the couple's marriage. Accordingly, the applicant has shown that the cumulative impact of the hardships is extreme. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to

be given to the hardship that results from family separation); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation).

The applicant's spouse also has provided evidence that he would suffer extreme hardship if he were to relocate to Mexico to live with his wife. First, Mr. [REDACTED] is a long-time resident of the United States, with a long and stable history of employment in the printing business. See *Permanent Resident Card for [REDACTED] Tax Records; Brief on Appeal*. He has often held two jobs at the same time. See *Tax Records; Letter from [REDACTED]*. His three children and four grand children reside near him in Texas. See *Letters from [REDACTED] Birth Certificates*. Apart from the applicant, Mr. [REDACTED] has no family ties in Mexico. See *Brief on Appeal*. Because he has no ties in Mexico, and because he is now 49 years old, [REDACTED] claims that he would not be able to secure a job in Mexico that would allow him to provide for his family. See *Statement of [REDACTED] Brief on Appeal; see also Letter from [REDACTED]* (noting the family's experience with economic difficulties in Mexico). The record also indicates that Mr. [REDACTED] suffered a significant hand injury, losing two fingers on his right hand, which would further detract from his ability to find gainful employment in Mexico. See *Photograph of the Applicant and Mr. [REDACTED]* (showing injury to his right hand); *Statement of [REDACTED]*

Based on Mr. [REDACTED] evidence of psychological and financial hardships to himself as a result of family separation, and his long residence, close family ties, and stable work history in the United States, coupled with the concerns regarding the lack of employment opportunities in Mexico, the AAO finds that the applicant has established extreme hardship to her spouse if the applicant is prohibited from entering the United States, or if her husband leaves the United States to be with the applicant. Although not all of the relevant factors in this case are extreme in themselves, the entire range of factors considered in the aggregate takes the case beyond those hardships ordinarily associated with deportation or inadmissibility, and supports a finding of extreme hardship. See *Matter of O-J-O-*, 21 I&N Dec. at 383; *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). The adverse factors in this case are the applicant's entry without inspection and the unlawful presence for which she seeks a waiver. The favorable and mitigating factors in this case include: the applicant's ties to her spouse, children, and grandchildren in the United States; the applicant's lack of a criminal record; and the extreme hardship to the applicant, her spouse, and her children, caused by the denial of a waiver. See *Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that the favorable factors in this case outweigh the adverse factors, and that a grant of relief in the exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.