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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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#6



FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)  
[Redacted] (Relates)  
[Redacted]

Date JUL 21 2010

IN RE: Applicant: [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)

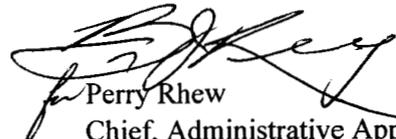
ON BEHALF OF APPLICANT:



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 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 ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and 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, son and stepdaughter.

The District Director found that the applicant had 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 April 12, 2007.

On appeal, the applicant, through counsel, asserts that the District Director failed to consider all relevant factors in regard to the hardship determination. *Counsel's Letter in Support of Appeal of Denial of I-601 Waiver of Grounds of Excludability*, dated May 14, 2007.

The record includes, but is not limited to, counsel's letter in support of appeal, letters from the applicant's wife and mother, a letter from the applicant's stepdaughter, copies of utility, mortgage, and insurance bills, a bank statement, a letter from Dr. [REDACTED] dated April 27, 2007, copies of the applicant's wife's medical record from [REDACTED] dated August 24, 2006, and letters of support from the applicant's friends, co-workers and their pastor. 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 case, the record indicates that the applicant entered the United States in June 1988 without inspection. On January 29, 2004, the applicant's United States citizen wife filed a Form I-130 on the applicant's behalf. On October 22, 2004, the applicant's Form I-130 was approved. In March 2006, the applicant voluntarily departed the United States. On March 18, 2006, the applicant filed a Form I-601. On April 12, 2007, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had 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 unlawful presence provisions under the Act, until March 2006, when he voluntarily departed the United States. The applicant is seeking admission into the United States within ten years of his March 2006 departure. 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).

Counsel states that the applicant’s wife does not want to live in Mexico with the applicant because of the poor environmental conditions and inadequate health care and educational system in the country. Counsel states that the applicant comes from a rural area in Mexico where the nearest school is about 30 minutes away and the nearest hospital 1.5 to 2 hours away. Counsel states that the applicant’s children do not read and write in Spanish and it will be difficult for them to adjust in Mexico. Counsel also states that the applicant’s son is being treated for a learning disability and Attention Deficit Hyperactivity Disorder (ADHD) and that he would not be able to receive the same level of instruction and care in Mexico. The record reflects that the applicant’s wife was born in the United States and has lived all her life in the United States. The record reflects that although her mother died in March 2006, the applicant’s wife still has her immediate family, her father and siblings living in the United States. There is no record that the applicant’s wife has any family ties in Mexico. The record also reflects that the applicant’s wife and her mother owned a home in Kalamazoo, Michigan, where she currently lives with her family and with the death of her mother in March 2006, the applicant’s wife has taken on the

responsibilities for the home by herself.<sup>1</sup> The applicant's wife stands to lose the home if she relocates to Mexico.

The record contains a U.S. Department of State Country Reports on Human Rights Practices for Mexico for 2005 and 2006, and a report on air pollution in Mexico prepared by the University of Salzburg, Austria, dated December 14, 2000, about the harsh conditions in Mexico. In addition, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico. The travel warning indicates that:

A number of areas along the border continue to experience a rapid growth in crime. Robberies, homicides, petty thefts, and carjacking have all increased over the last year across Mexico... Criminals have followed and harassed U.S. citizens traveling in their vehicles in border areas including [REDACTED] and other parts of Mexico.

The report further indicates that:

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.

*Travel Warning-Mexico, U.S. Department of State, dated April 8, 2010.*

The record reflects that the applicant's wife, if she chooses to join the applicant in Mexico, would be relocating to a country to which she is unfamiliar. She has no other family ties in Mexico except the applicant. She would have to leave her family and support network and would be concerned about her and her children's safety, health, academics, and financial well-being at all times in Mexico. Based on the totality of the evidence, it has been established that the applicant's spouse would suffer extreme hardship if she relocates to Mexico to reside with the applicant due to his inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant relocates abroad due to his inadmissibility. With respect to this criteria, the applicant's wife states that she has been physically and emotionally stressed ever since the applicant returned to Mexico. *Letter from [REDACTED] dated April 23, 2007.* The record includes letters from friends, family members, co-workers and their pastor, Reverend [REDACTED], detailing the hardships (emotional and financial) the applicant's wife has undergone and continues to undergo with the unavailability of the applicant. In her letter dated May 14, 2007, counsel references the family's expenses, including mortgage, utilities, insurance and student loans, to

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<sup>1</sup> See a copy of Citimortgage dated April 20, 2007 and a copy of her mother's death certificate.

highlight the financial difficulties faced by the applicant's wife without the applicant's income. The record shows that the applicant's wife's net monthly income of about \$1,300 is insufficient to pay the family's monthly bills of about \$1,400 in addition to food and other necessary expenditures for the family. In a letter dated April 26, 2007, Rev. [REDACTED], the family's pastor, states that the applicant's wife needs the applicant emotionally and financially. Rev. [REDACTED] states that shortly after the applicant went to Mexico, the applicant's wife lost her mother, leaving her in a leadership role with her siblings and in helping her father adjust to the loss of his wife. Additionally, Rev. [REDACTED] states that the applicant's wife works a full-time job, attends [REDACTED] Community College, and takes care of her 9 year-old daughter and stepson. The record includes a letter from Dr. [REDACTED] dated April 27, 2007, stating that the applicant's wife has been her patient since July 3, 2006, and that she has complained on several occasions of depression and anxiety, and migraine headaches and that she has been medically treated for depression, anxiety and migraine headaches. Dr. [REDACTED] concludes that the applicant's wife has "several stressors, many revolving around her husband." The medical record from [REDACTED], dated August 24, 2006, indicates that the applicant's wife has mild depression and occasional anxiety. In an undated letter, the applicant's stepdaughter, [REDACTED] states that her family needs the applicant to come back in their lives so that they can be a family again. [REDACTED] states that the passing of her grandmother makes it very difficult for her family to live without the applicant and that she hates to see her mother sad and crying. Counsel states that the applicant's stepdaughter has no contact with her biological father and sees the applicant as her only father. *Letter from [REDACTED]* dated May 14, 2007.

A preponderance of the relevant evidence demonstrates that the financial and emotional hardships faced by the applicant's wife, cumulatively rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

A review of the documentation in the record, when considered in the aggregate, reflects that the applicant has established that his U.S. citizen wife would suffer extreme hardship if the applicant is unable to reside in the United States with his wife. Moreover, it has been established that the applicant's U.S. citizen wife 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.

Although extreme hardship is a requirement for a waiver of inadmissibility under section 212(a)(9)(B)(v), once established, it does not create an entitlement to such relief. Rather, extreme hardship to a qualifying relative is one positive factor to be considered in the determination of whether or not the applicant merits a favorable exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The negative factors in this case are the applicant's initial entry without inspection and his unlawful presence in the United States. The positive factors in this case include the extreme hardship the applicant's United States citizen wife and children faces if the waiver is denied,

attestations from his character witnesses, the applicant's past employment and his lack of a criminal record.<sup>2</sup>

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained.

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<sup>2</sup> See a letter by the Record Keeper, Department of Public Safety, [REDACTED] dated February 7, 2005, and a letter by [REDACTED] dated February 7, 2005.