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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

[redacted]

H6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 2 5 2010
(CDJ 2004 824 170 relates)

IN RE: [redacted]

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:

[redacted]

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 February 9, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, at 4-8, submitted March 28, 2007.

The record contains a brief and correspondence from counsel; statements from the applicant's wife and the applicant's wife's co-worker; letters from physicians regarding the health of the applicant's brother-in-law, father-in-law, and wife; documentation in connection with the applicant's wife's default on a mortgage and car loan, and; information 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 May 1999. He remained until approximately January 2006. Thus, the applicant accrued over six years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. 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, the applicant's wife states that she is suffering extreme hardship due to the applicant's absence. *Statement from the Applicant's Wife*, dated March 9, 2007. The applicant's wife explains that she resides with her two elderly parents, her nine-year-old son, her brother with a mental disability, and her grandson who has vision problems due to a tumor in his eye. *Id.* at 1. She provides that her family members depend on her for their medical care and daily errands. *Id.*

She states that, in addition to caring for her family members, she works many hours which is taking a toll on her physical and mental health. *Id.* She reports that she has had to take leave from work due to her illness. *Id.* She indicates that she took a second job and she works irregular hours up to 18 hours per day, including a several month period in which she worked seven days per week. *Id.*

The applicant's wife states that her son is at high risk for diabetes. *Id.* She provides that her son has had to miss days of school due to her inability to provide transportation for him. *Id.* She indicates that she used to rely on the applicant for assistance and support. *Id.* at 1-2.

The applicant's wife states that her father suffered a stroke on October 31, 2006 and he is partially paralyzed. *Id.* at 2. She explains that the responsibilities she has assumed due to her father's illness have created a serious burden for her. *Id.*

The applicant's wife provides that she was unable to make payments on her only automobile and it was repossessed. *Id.* She provides that she is behind on her house payments, and that she needs a place for her and her elderly parents to reside. *Id.*

The applicant's wife states that her brother has a debilitating psychiatric disorder and requires close supervision. *Id.* She explains that she and her mother must care for her brother, and that they risk injury because sometimes he is difficult to control. *Id.*

The applicant's wife states that the applicant is unable to sustain himself in Mexico due to the crime rate and shortage of jobs. *Id.* She provides that the applicant is unable to help her, yet she does not wish to receive public assistance in the United States. *Id.*

The applicant's wife reports that she is experiencing depression for which she takes medication. *Id.* She notes that her doctor has recommended that she take time off work. *Id.*

The applicant submits a letter from a physician, who states that she is the primary care physician for the applicant's brother-in-law. *Letter from* dated March 1, 2007. reports that the applicant's brother-in-law resides with the applicant's wife, and that he "suffers from a debilitating psychiatric disorder and requires close supervision." *Id.* at 1.

The applicant provides documentation to show that his wife's mortgage lender notified her of possible foreclosure proceedings regarding her home due to her lack of payment. *Letter from* , dated February 25, 2007. The applicant further submits documentation to show that his wife's vehicle was repossessed due to nonpayment. *Letter from* , dated January 11, 2007.

The applicant provides a letter from his son's school that shows that his son has experienced a decline in grades, difficulty in his ability to focus on schoolwork, negative behaviors in class, an increase in unexcused tardies, an increase in absenteeism, and delays of up to one hour in being picked up from school. *Letter from* , dated March 9, 2007.

The applicant submits a letter from a social worker, who attests that the applicant's father-in-law is in recovery with mental and physical issues, and that he is undergoing physical therapy, occupational therapy, and speech therapy. *Letter from Social Worker*, dated March

9, 2007. reports that the applicant's father-in-law is financially dependent on the applicant's wife and mother-in-law, and that he relies on them for ongoing care. *Id.* at 1.

The applicant provides a letter from his wife's physician, , who states that the applicant's wife is under his care for depression, and that she occasionally needs to come in for doctor's visits and to arrive to work late. *Letter from* , dated March 14, 2007. reports that the applicant's wife takes medication to help her sleep. *Id.* at 1. The applicant provided copies of his wife's prescriptions for Prozac, Fluoxetine, Trazodone and Desyrel to treat her depression and insomnia.

Counsel discusses the circumstances faced by the applicant's wife, and asserts that her extreme hardship is greater than the normal economic and social disruptions involved when a family member is removed. *Brief from Counsel* at 4-8.

Upon review, the applicant has established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The record reflects that the applicant's wife has unusual family responsibilities, including a care-giving role with her father who is recovering from a stroke and her brother with a debilitating psychiatric disorder. Having a significant role in providing care for multiple family members in one's household who face serious illness or disabilities is an uncommon circumstance not ordinarily faced by the spouses of those who reside abroad due to inadmissibility.

The record contains references to hardship 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. In the present matter, the AAO observes that the applicant's son is struggling in school, at least in part due to the applicant's absence. It is evident that the applicant's son's difficulties are contributing to the applicant's wife's emotional hardship.

The applicant's wife states that she is suffering economic hardship due to the need to support herself and her family alone. The AAO finds the documentation of the potential foreclosure on her home and the repossession of her vehicle to be substantial evidence that the applicant's wife is facing considerable financial difficulty.

The record supports that the applicant's wife is enduring significant emotional hardship due to her present circumstances, including separation from the applicant, the pressures of her care-giving responsibilities, her need to work multiple jobs to earn income, her financial difficulties including the possible foreclosure on her home and the repossession of her vehicle, and the struggles of her son. The applicant's wife takes medication to regulate her sleep and depression and she is under the care of a physician. Considering all elements of emotional hardship to the applicant's wife in aggregate, the AAO finds that she will experience extreme hardship if the applicant is prohibited from returning to the United States.

The applicant has shown that his wife will endure extreme hardship should she relocate to Mexico. As discussed above, the applicant's wife has a significant care-giving role in her household, including providing assistance to her father who is recovering from a stroke and her brother with a serious mental disability. The applicant's mother-in-law resides in the household with the applicant's wife, yet she is approximately 77-years-old and it is evident that the applicant's wife would face substantial emotional hardship should she depart the United States and lack the ability to directly assist her family. As the applicant's wife's home may enter foreclosure, the record supports that the applicant's wife's family members may face the need to relocate to a new residence with the associated physical and financial burdens. It is understood that the applicant's wife would endure significant psychological hardship should she relocate to Mexico while her family is in such a difficult situation, particularly considering they currently rely on her for economic, emotional, and physical support.

The applicant's wife reported that the applicant has been unable to find employment in Mexico which supports that she would face economic hardship should she join him. The applicant's wife works in the United States, yet she would be compelled to relinquish her positions should she depart.

As noted above, the applicant's wife receives medical care in the United States for depression and insomnia. Should she relocate to Mexico, she will be separated from the physician who provides her care. The fact that the applicant's wife would lose her employment in the United States calls into question whether she would be capable of funding continued medical care in Mexico.

All elements of hardship to the applicant's wife, should she relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant's wife would suffer extreme hardship should she join the applicant in Mexico.

Based on the foregoing, 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-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 wife would experience extreme hardship if he is prohibited from residing in the United States; the applicant's U.S. citizen son, brother-in-law, mother-in-law, and father-in-law will experience significant hardship if the applicant is not permitted to return to the United States to assist his family, and; the applicant has helped care for his U.S. citizen son.

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.