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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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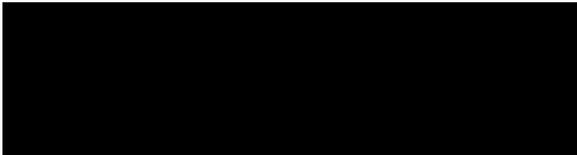
FILE:  Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: **NOV 29 2010**

IN RE: Applicant: 

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,

Tariq Syed
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be withdrawn. The waiver application will be approved.

The applicant is a native and citizen of Mexico who entered the United States in January 1994 without inspection. In December 2005, the applicant departed the United States. On January 3, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On December 11, 2006, the District Director denied the applicant's Form I-601, finding the applicant inadmissible 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. *Decision of the District Director*, dated December 11, 2006. The District Director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Id.* On December 29, 2006, the applicant's wife filed an appeal of the District Director's decision with the AAO. On April 5, 2010, the AAO dismissed the applicant's appeal. On or about May 5, 2010, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision.

In its April 5, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Although the AAO noted that the applicant had established that his United States citizen wife would experience extreme hardship if she remained in the United States without the applicant, it also observed that he had failed to establish extreme hardship if she relocated to Mexico. On motion, the applicant, through counsel, asserts that his wife and stepchildren will suffer extreme hardship if they join him in Mexico and submits evidence in support of his claim.

The record in support of the applicant's motion includes, but is not limited to, counsel's brief in support of the motion to reopen and reconsider, medical and prescription documents for the applicant's wife, an affidavit for the applicant's wife, articles on increased crime and violence in Mexico, and travel warnings on Mexico. The entire record was reviewed and all relevant evidence considered in rendering this decision.

In counsel's brief dated May 28, 2010, counsel states "[i]t cannot be gainsaid that the denial of a United States education and the acculturation inherent in United States residency, essential factors to the building of American character requisite to good citizenship in this country, would constitute significant hardship to United States citizen children raised and education in a foreign country." Counsel claims that the applicant's wife would feel "maternal neglect and guilt feelings of having deprived the children entrusted to her care the singular nurturing benefits of United States upbringing and preparation for responsible citizenship in this country." In an affidavit dated May 4, 2010, the applicant's wife states she "could not in good conscience subject [their] daughter and [her] other children to such a life in a foreign country, away from all their family, friends, acquaintances, and teachers with whom they enjoy such a good relationship in the United States." The applicant's wife also states she does not want to deny her ex-husband his visitation rights to his children. Additionally, the applicant's wife claims that her "stepson has special medical needs currently addressed by the Memorial Neurological Association in Houston, Texas, that

would not be available to him in Mexico.” The AAO notes that the record does not contain any medical documentation establishing that the applicant’s wife’s stepson suffers from any medical conditions. While the applicant’s stepchildren are not qualifying relatives for the purposes of a section 212(a)(9)(B)(v) waiver proceeding, the AAO notes the impact on the applicant’s wife of being unable to raise her children in a safe environment and provide them with a good education. Additionally, the AAO notes the safety concerns of the applicant’s wife regarding her children relocating to Mexico. Further, the AAO notes that the record establishes that the applicant’s wife is taking various medications, including paroxetine which is an antidepressant.

Counsel states “greatly enhancing and intensifying this undeniable hardship to both [the applicant’s wife] and children is the present state of well-founded fear and personal danger that characterizes residency in Mexico today.” Counsel claims that the applicant’s wife would have “extreme fear...with respect to herself and to her children and [the applicant].” The applicant’s wife states she “would be extremely fearful for [herself], [the applicant], and [her] family because of the well-known conditions of violence prevalent in Mexico.” The AAO notes that counsel submits numerous crime and safety reports for various states in Mexico, an article on murders in Mexico, and an article on the United States Department of State travel warning issued for Mexico.

The AAO acknowledges that that the applicant’s wife has been residing in the United States for many years and that she may experience hardship in relocating to Mexico. The AAO notes that the applicant is from the central Mexican state of Guanajuato; however, the record does not establish where the applicant is currently residing. *See Form G-325*, undated. On September 10, 2010, the U.S. Department of State issued a travel warning to United States citizens thinking of traveling to Mexico. The AAO notes that the situation in parts of Mexico has become unstable and unsafe for United States citizens.

Based on applicant’s spouse’s concern for her children’s safety in Mexico, having to raise their children in Mexico, and the general safety concerns in Mexico, the AAO finds that the applicant’s wife would suffer extreme hardship if she were to relocate to Mexico to be with the applicant. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant’s initial entry without inspection, and periods of unauthorized employment and unlawful presence. The favorable and mitigating factors are the applicant’s United States citizen wife and stepchildren, the extreme hardship to his wife if he were refused admission, his payment of taxes, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the AAO will withdraw its prior decision and the waiver application will be approved.

ORDER: The prior decision of the AAO is withdrawn. The waiver application is approved.