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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO Date: DEC 15 2008  
CDJ 2003 745 167

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated January 30, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility. 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

....

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and ((II) are not counted in the aggregate.<sup>1</sup> For purposes

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<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that in the applicant entered the United States from Mexico without inspection in July 1994, remaining in the United States until June 2004, at which time she voluntarily departed to Mexico. The applicant therefore accumulated seven years of unlawful presence, from April 1997 to June 2004, and her voluntary departure from the country triggered the ten-year-bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is under section 212(a)(9)(B) of the Act, which provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child is not a consideration under section 212(a)(9)(B)(v) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

On appeal counsel indicates that judicial and administrative decisions describe factors to be considered in determining hardship. He states that hardship to a parent translates into hardship to the entire family. Counsel conveys that the applicant has no significant job skills in Mexico, a poor, developing country; few family members to help her and her children; and has had difficulties finding a place to live. Counsel asserts that the applicant’s husband will experience extreme hardship as he will be forced to support himself in the United States and his wife in Mexico.

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<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

According to counsel, the adjudicator failed to consider that the instant case arises in the Ninth Circuit's jurisdiction and to properly consider the evidence.

In support of the waiver application, the record contains the following:

- A declaration by the applicant's spouse, [REDACTED], in which he states that his wife and his two U.S. citizen children returned to Mexico in June 2004. He conveys that he cannot imagine continued separation from his family as he and his wife have always lived together in the United States since their marriage. He indicates that his children need to be educated in the United States, rather than in Mexico where they will have no opportunities. [REDACTED] states that it will be a burden on him and on his wife if she worked in Mexico for a very low wage. He states that separation has affected his employment, lowering his work load and making it harder for him to go to work. [REDACTED] conveys that his daughter is having problems at school, which the school psychologist attributes to family separation; and that his daughters are often ill. He states that in the United States his daughters have medical insurance, which they do not have in Mexico. He states that his daughters cry when it is time from him to leave Mexico, which affects him for days after arriving in the United States; he indicates that he feels his health is deteriorating and he does not eat or sleep as well as he had. [REDACTED] states that if his daughters were to live with him in the United States, he would have the added expense of childcare. He states that he worries his daughters will forget him if he does not visit them, and that his wife suggested they divorce if she cannot become a legal resident because they cannot live apart with visiting each other once or twice a year.
- Birth certificates showing the applicant's daughters were born in the United States on June 24, 1998, and November 23, 1999.
- An employment letter dated November 28, 2005 by Acorn Engineering Company indicating that the applicant's husband is a polisher, working 40 hours each week, earning \$12.36 per hour.
- A letter by the school principal at Elementary School Urbana Federal stating that the applicant's children are not happy at their school or in the place where they are currently living.
- A letter dated November 25, 2005, by [REDACTED], a psychologist in Mexico, stating that the applicant's seven-year-old daughter has become rebellious and aggressive, not wanting to attend school on account of fear of separation from her mother, which is based on separation from her father. She diagnoses the girl as having disturbance of anxiety of separation from the mother.
- A letter dated November 25, 2005, by [REDACTED] in which he states that he has attended to the applicant's daughters, who constantly need his services for depression, anorexia, and tics and gastroenteritis, allergic rhinitis, and neurodermatitis due to the "psychological problem of paternal affect." He recommends reuniting the applicant's daughters with their father.
- A letter by the applicant's daughter.
- A letter by the applicant, which is not translated into English.

All of the evidence in the record has been carefully considered by the AAO in rendering this decision.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s spouse must be established in the event that he joins the applicant; and alternatively, if he remains in the United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

With regard to family separation, courts have stated that “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).

The applicant’s husband indicates that separating him from his wife and daughters has been very difficult on him and on his daughters. According to the letters by the psychologist, by the school principal, and by [REDACTED], separation of the applicant’s daughters, especially her oldest daughter, from their father is creating serious psychological and physical problems for her daughters. Although hardship to the applicant’s children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by [REDACTED] as a result of his concern about the well-being of his daughters, is a relevant consideration. The declaration by [REDACTED] conveys his

concern about his daughters' emotional and physical health, and how separation from his family has impacted him emotionally and physically. In light of the letters about the applicant's daughters and the declaration by [REDACTED], the AAO finds that [REDACTED] has experienced, and will continue to experience, extreme hardship if he were to remain in the United States, separated from his wife and daughters.

The conditions in the country where the applicant's qualifying relative would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant in determining hardship, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). The record here does not reflect other factors beyond the alleged economic detriment of the applicant's wife having to be employed in a low-wage job which would rise to the level of extreme hardship if the [REDACTED] were to live in Mexico with his family. There is no indication that [REDACTED] would be unable to obtain employment in Mexico in order to support his family. Furthermore, the BIA and courts have held that the difficulty an applicant may experience in securing employment is not sufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship; *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship).

Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the AAO finds that the hardship to [REDACTED] does not rise to the level of "extreme" hardship if he joins his wife in Mexico.

The applicant has established extreme hardship to her husband if he were to remain in the United States without her; however, she has not established extreme hardship if he were to join her in Mexico. Thus, extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B) of the Act, 8 U.S.C. § 212(a)(9)(B), has not been established.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.