U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 04 2009

CDJ 2004 760 192

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality Act.

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.

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).

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 dismissed.

The applicant, [redacted], is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 the spouse of [redacted], a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2006. The applicant filed a timely appeal.

On appeal, counsel states that the director erroneously applied the incorrect hardship standard and relied on outdated decisions. Counsel states that extreme hardship has been found in court decisions that did not involve deportation or removability on account of criminal grounds. Counsel states that the applicant's spouse and child have experienced hardship since the applicant left the United States. She states that [redacted] has type II diabetes, high blood pressure, and high cholesterol and his health insurance through his employment pays for treatment of his condition. Counsel states that [redacted] does not have health insurance in Mexico and would not be able to afford medication there. Counsel states that [redacted] and her daughter are not able to use [redacted] health insurance because they live in Mexico. Counsel states that [redacted] pays a mortgage and built up equity in his house and would lose his home if he relocated to Mexico. Counsel asserts that family unity is the most important hardship factor with respect to showing extreme hardship. Counsel states that the applicant was deprived of due process of law due to the director's use of boilerplate language and failure to adequately state the basis for the denial.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

> (B) Aliens Unlawfully Present
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > > (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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant accrued unlawful presence from April 2004 when she entered the United States without inspection, until November 2005, when she left the United States and 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 found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). That section 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.

The waiver under section 212(a)(9)(B)(v) of the Act 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 is not a consideration under the statute, 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. Thus, hardship to the applicant and her child 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 but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"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). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant's qualifying relative and 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.

Counsel is correct in that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines "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).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including the medical records, invoices, letters, a declaration, photographs, birth certificates, and other documents.

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

The AAO notes that the undated letter by does not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In that the undated letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

With regard to remaining in the United States without his wife, [redacted] states in his declaration that he is pained to be separated from his wife and daughter. He states that he cannot move to Mexico and give up his home and that it is an emotional and financial burden maintaining two separate households if his wife remained in Mexico. [redacted] indicates that he has worked as a fork lift technician at Toyota Material Handling for ten years. He states that he has health insurance through his employer and is at risk for heart disease and is being treated for diabetes, high blood pressure, and high cholesterol. He states that he wants his wife and daughter in the United States so they can remain healthy and benefit from his health insurance.

The letter by Toyota Material Handling reflects that [redacted] earns $23.60 per hour, and invoices show his monthly mortgage is $690 and property tax is $973. These documents fail to demonstrate that [redacted] is financially burdened in maintaining two households.

[redacted] indicates that he is pained by his separation from his wife and daughter. Counsel states that [redacted] daughter will have long-term psychological damage as a result of separation from

her father. Although hardship to the applicant's child is not a consideration under section 212(a)(9)(B)(v) of the Act, hardship to her child will be considered only to the extent that it results in hardship to the applicant's spouse.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991).

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record before the AAO, however, fails to establish that the situation of [redacted], if he remains in the United States without his wife, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by the applicant's spouse is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan* and *Perez, supra.*

With regard to joining his wife to live in Mexico, [redacted] indicates that he would lose his longer-term job, home, and health insurance in the United States. Counsel states that [redacted] is under treatment in the United States for serious health conditions, diabetes, high blood pressure, and cholesterol; and that diabetes left untreated has serious health consequences. The record contains medical records of [redacted] and documents about diabetes, Exhibits J – P. Medical records show that [redacted] was diagnosed with diabetes in May 2005 and that he takes medication for his condition.

The AAO finds that the record is insufficient to show that [redacted] would experience extreme hardship if he were to join his wife to live in Mexico. The letter from [redacted] doctor only states that he is being treated for diabetes. It does not explain the severity of his condition. Other medical documentation in the record can be given little weight as it was not accompanied by an explanation in layman's terms as to what it means. The AAO is not in a position to interpret medical records. No documentation has been submitted to show that [redacted] would be unable to receive and afford medical care for his health problems in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.* It has not been established that [redacted] financial losses are sufficient to establish extreme hardship as the U.S. Supreme Court in *INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981), upheld the BIA finding that economic detriment alone is insufficient to establish extreme hardship. There is no claim made and no supporting documentation presented to establish that [redacted] and his spouse would be unable to obtain employment in Mexico.

When the hardship factors presented in this case are considered both individually and collectively, the AAO finds that those factors do not constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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)(v), the burden of establishing that the application merits approval 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.

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