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U.S. Immigration and Citizenship Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2005 681 355

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).

Ellen C. Johnson

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], who is a naturalized 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 December 15, 2006. The applicant filed a timely appeal.

On appeal, counsel states that in determining whether or not there is hardship there must be a thorough review of the specific facts of each individual case. Counsel states that the submitted psychological report, the letter by [redacted] records from Women's Care Physicians of Louisville, and the letter by [redacted] demonstrate "the extreme and exceptionally unusual hardship that [redacted] has already suffered" in the absence of her husband. Counsel contends that the director's conclusion, that the applicant submitted no evidence of extreme hardship to a qualifying family member, is arbitrary, capricious, and unreasonable. He states that if [redacted] resides with her husband in Mexico, she may not receive healthcare, making it unlikely that she will be able to conceive and produce offspring.

The AAO will first address the director's finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9) of the Act. That section provides, in 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). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1994 and remained in the country until October 2005. He accrued eight years of unlawful presence, from April 1, 1997 to October 2005, and triggered the ten-year-bar when he left the United States, rendering him 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 will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized 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.

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: the letters dated September 26, 2005 and January 10, 2007 by the psychological report, records from Women's Care Physicians of Louisville, the undated letter dated by [redacted], and other documentation.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's wife must be established in the event that she remains in the United States without the applicant, and alternatively, if she 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.

With regard to the hardship that she would experience if the waiver application were denied, [redacted] letter, dated September 26, 2005, states that she has a close relationship with her husband. She states that she was diagnosed with polycystic ovary syndrome, which condition makes achieving pregnancy difficult. She states that she is undergoing an expensive treatment that has not been successful. The excuse slip by Women's Care Physicians of Louisville, P.S.C., states that [redacted] is under their care and that she has polycystic ovarian syndrome, which makes pregnancy more difficult to achieve. The slip does not show the year in which it was written, only the month (January) and the day of the month (the tenth), are shown; the signatory states that [redacted] has been trying for over three years to get pregnant. The medical record by Women's Care Physicians, dated October 22, 2003, indicates that [redacted] came for a consultation on conception and has been trying to conceive for three years. In her September 26, 2005 letter, [redacted] conveys that she cannot continue with fertility treatment and pay household expenses without her husband's financial support. In her letter dated January 10, 2007, [redacted] stated that she has been married for six years and four months and she has had stress and depression and health problems since her husband's departure. She states that she went to Mexico in November 2005 to be with her husband and lived with her mother-in-law in an old house that is "falling apart, holes everywhere." [redacted] stated that she quit her job at OVEC because I didn't want to leave Mexico without my husband. She stated that in Mexico she had stomach pain and vomiting and was taken to a health center where she was given medicine and learned she has two gallstones, which were triggered by food and stress. At her second visit to the doctor's office, she was told the gallstones had to be

removed and she was to eat only fruits and vegetables. She states that she has lost over 60 pounds because she did not want to have surgery in Mexico and did not have a job or money. She states that it is depressing knowing she needs surgery, but does not have her husband with her for love and support. She states that she will vomit if she eats and if she does not eat the stomach pain worsens and the medication given by the doctor in Mexico no longer controls the pain. She states that she must work and is sick all the time and cannot afford to travel to Mexico.

However, the AAO finds that the applicant's spouse submitted no medical records of her 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The letter by [redacted], dated February 7, 2007, conveys that [redacted] was a senior in high school when she married and graduated in 2001. She states that [redacted] obtained a job as a translator at the county health department and she and the applicant rented a home and were anxious to start a family, but [redacted] was unable to conceive. [redacted] states that [redacted] was diagnosed with polycystic ovarian syndrome, "a genetic condition that impairs ovulation and precipitates other health conditions such [as] excessive weight gain, hypertension and diabetes. [redacted] suffers from these conditions." In 2004, she states that [redacted] began fertility treatment and was prescribed Clomid, a fertility drug. She states that the applicant left the United States in October 2005 and is living with his mother and brothers in Las Pilas, a village in the state of Guanajuato, Mexico, where his family lives on a small farm. She states that [redacted] visited him three times in the past year. She states that [redacted]' has gallstones and "has had to postpone the surgery because she does not have health insurance at work and does not have the money to pay for costly surgery. [redacted] states that [redacted] has also developed hypertension for which she needs medicine, but, again, cannot afford it." [redacted] conveys that separation from the applicant has caused [redacted] to become "seriously depressed and anxious." She states that [redacted]s is unable to sleep more than a few hours a night, has little appetite and cannot eat without stomach distress, and has lost 110 pounds in the past year. She states that while the applicant was employed in the United States he earned three times [redacted] income. Even though [redacted] is employed full time, [redacted] states that [redacted]s has low wages and has had to move in with her parents. She states that there is no employment for the applicant or [redacted] in Guanajuato and that [redacted] has had to send money to her husband since his family is very poor and cannot support him. To provide for her husband, [redacted] states that [redacted] is unable to meet her basic needs for medical care. If [redacted] joined her husband in Mexico, [redacted] states that [redacted]s will have to adjust to a life of poverty and that access to medical care will be minimal, and fertility treatment, if available, will be unaffordable.

Although the input of a mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and [redacted] The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a

single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Furthermore, the record contains no medical records in support of [redacted] assertion that [redacted] has hypertension and requires gallstone surgery. Nor is there supporting documentation of [redacted] wage statements and financial obligations, which are needed to show that she is unable to afford medical care. 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.*

The undated letter by [redacted] supervisor, states that she met [redacted] in September 2006 at the Shelby County Health Department where she is employed. She indicates that and the applicant have a close relationship. states that [redacted] has a close relationship with her parents and siblings and will feel an emotional loss leaving them.

Family separation must be a hardship consideration. *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). The Ninth Circuit in *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. However, the record before the AAO fails to establish that the situation of [redacted] if she remains in the United States without her husband, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [redacted] as a result of separation from her husband, 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 her husband to live in Mexico, there is no documentation in the record that supports [redacted]s statements that the applicant and [redacted] will be without employment in Mexico; that [redacted] will have to adjust to a life of poverty; that access to medical care will be minimal; and that if fertility treatment is available, it will be unaffordable. 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.*

Having carefully considered the hardship factors raised collectively, the AAO finds that in this case those factors are not sufficient to establish extreme hardship to [redacted] if she were to remain in the United States without her husband, and if she were to join her husband to live in Mexico.

Consequently, the factors presented do not in this case 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 he 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.