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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

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 01 2009

CDJ 2004 802 152

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's spouse, [redacted], is 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 his 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 6, 2006. The applicant filed a timely appeal.

On appeal, counsel submits letters by [redacted], a letter by [redacted] medical records of [redacted], a plaintiff's petition, and a 19-page invoice.

The AAO will first address the 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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in April 2000 and remained until November 2005. The applicant accrued five years of unlawful presence from April 2000 until November 2005, and triggered the ten-year-bar when he left the country, 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 the applicant and his children 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.

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 addition to the evidence described on appeal, the record consists of letters by the applicant's mother-in-law, invoices, a letter by [redacted], and other documentation.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse 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 remaining in the United States without her husband, [redacted] states in an undated letter that her financial hardship consists of trying to raise two children on her own. She states that she has been living with her mother and step-father since she married in order to afford her husband's immigration process. [redacted] states that their living situation is stressful; her mother has been stressed financially and emotionally having them there for so long and her children need their own room in a home. [redacted] conveys that her mother has medical problems, diabetes and high blood pressure; and she has had her own medical problems. A letter by [redacted] dated February 14, 2007, states that [redacted] has a history of gastrointestinal problems and GERD, and has tested positive for H-Pyori ulcer bacteria twice. He states that for years [redacted] was treated for migraine headaches with Topamax. [redacted] states that for the past five years Ms. health problems were adequately controlled, but raising a two-year-old child with the added stress of her husband's deportation, "has rekindled her old illnesses which have again become a serious medical problem. Her GERD, ulcer symptoms and Migraines are all active again and make it difficult for her to function raising a two year old child with her compromised health issues." In her letter dated March 15, 2007, [redacted] conveys that she is in major financial debt with her family due to costs related to immigration and money spent to visit her husband in Mexico. In her letter dated December 27, 2005, [redacted] states that while her husband was in the United States he took care of their children while she worked. She states that without her husband her parents have rearranged their schedules to temporarily assist with her older child; she states that her baby is in daycare, which is expensive and that she cannot manage on her own without her husband. She states that she has a credit card in her mother's name, and car insurance and a cell phone contract, and pays her parents $450 each month for rent. The letter dated December 27, 2005, by [redacted], the mother of [redacted], states that when "her daughter's car quit running, she could not get a loan to get another car because of bad credit. For this reason I let her use my credit card to buy a car. She also used this card to finance part of her and [redacted]'s trip to Mexico to take care of the immigration process. This is a debt that she and [redacted] are responsible for. . . . The balance as of this date is $17,664." The record contains a Chase credit card invoice with the balance of $17,664. Another letter by [redacted], which is dated December 17, 2005, states that her daughter, son-in-law, and grandchildren reside in her house and pay rent of $450 each month. She states that the applicant is presently in Mexico. [redacted] letter conveys that at the cost of $300 each month she provides daycare in her house for the applicant's daughter. The plaintiff's petition filed on February 27, 2007, is a cause of action filed against the applicant's wife for failure to pay $6,610.79. The account information report states that the applicant's wife's last payment was on February 19, 2003.

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 evidence of the cause of action, the Chase credit card invoice, the letters by and the letters by [redacted], and the letter by [redacted] describing medical conditions, demonstrate that the hardship that would experience if she were to remain in the United States without the applicant rises to the level of extreme.

The applicant makes no claim of extreme hardship to his wife if she were to join him to live in Mexico.

Based on the record, 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.