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U.S. Citizenship and Immigration Services

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JUN 2 0 2007

FILE: [redacted] Office: PHOENIX, AZ Date:

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, 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), for having been unlawfully present in the United States. The applicant is married to a naturalized citizen spouse, [redacted]; and she has a lawful permanent resident son, born on August 25, 1988, and an American-born son, born on June 17, 1992. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The District Director denied the waiver application, and counsel submits an appeal.

The AAO will first address the finding that the applicant is inadmissible pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States.

Section 212(a)(9)(B) of the Act provides that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> (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.
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> . . .
>
> (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.
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> . . .

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General 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). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II).[1] For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.[2] The three- and ten-

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[1] 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).

[2] *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

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). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States in 1988 using a border crossing card and that she left and re-entered the country in October 1, 2005, triggering the ten-year bar. *Form I-72, dated February 8, 2006.*

The AAO will now address the director's finding that granting a waiver of inadmissibility is not warranted.

On appeal, counsel makes the following statements. The district director misapplied *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 564 (BIA 1999). The hardship and equity factors in the instant case did not accumulate while the applicant was in removal proceedings as they had in *Matter of Cervantes-Gonzalez.* Unlike the facts in *Matter of Cervantes-Gonzalez,* the applicant's entire family is in the United States. The *Matter of Cervantes-Gonzalez* decision relies heavily on the fact that the applicant and his wife lacked financial ties to the United States. In court decisions such as *Mejia-Carrillo v. US*, 656 F.2d 520 (9th Cir. 1981); *Ravancho v. INS*, 658 F. 2d 169 (3rd Cir. 1981); and *Tukhowinich v. INS*, 57 F.3d 869 (9th Cir. 1985) a number of factors have been considered in the hardship determination. *Matter of Cervantes-Gonzalez* conveys that country conditions are relevant in a hardship determination. If the applicant's husband moved to Mexico he would lose his position in the United States. As demonstrated by the letter from the Consul of Mexico, the [redacted] family will have a difficult time establishing in Mexico where restrictive employment practices and age are obstacles in obtaining a job. Citizenship and Immigration Services (CIS) requires an applicant's qualifying relative be on his or her deathbed before finding extreme hardship. When the common results of deportation are combined, extreme hardship exists. Separation is an important hardship consideration.

The W-2 Forms in the record indicate that the applicant's husband has been steadily employed. The letter from [redacted] indicates that he is employed full-time as a vinyl manager, earning $83,004 annually. The record contains income tax records; birth certificates; letters from the applicant and her children and husband; letters from employers, friends, and others; a marriage certificate; school records; certificates of commendation; information about Mexico; photographs; psychological evaluations; and other documentation.

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 the applicant and her children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative, which in this case is the applicant's husband. If extreme hardship to the qualifying relative is

established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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, 564 (BIA 1999). The Board of Immigration Appeals (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 564. 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).

In applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The affidavit from [redacted] states the following. He married the applicant on September 6, 1986. Their first child was born on August 25, 1988 in Mexico. He began working in the United States in 1989. Their second child was born in June of 1992 in the United States. While in the United States, his wife managed the house payments and the children's education. While waiting for her work permit, his wife attended college and volunteered at his children's school. After 20 years of marriage, he cannot live without his wife by his side. It would be nearly impossible to find a job in Mexico to cover their debts. He does not wish to sell their property; it will be difficult for his children who will remain to America where they have been raised and speak the language. His wife had been misinformed about the immigration consequences of going to Mexico with a travel document.

The record contains psychological evaluations of the applicant and her husband and their sons. The evaluation of the applicant's husband indicates that he is a college graduate with a bachelor's degree in biochemical engineering from the Institute of Technology in Tijuana in 1986. The evaluator indicates that [redacted] stated that it is very important for his sons to have the benefit of their mother, and if she is deported, they would have to move. The evaluator states that [redacted] is "exhibiting behavioral characteristics consistent with an adjustment reaction to the possibility of his wife being deported" and that he and his sons would be severely impacted by the applicant's deportation. The evaluator states that if they relocate to Mexico to be with her they would not possess the skills to be successful.

The evaluator states that the youngest [redacted] child, [redacted] is able to speak some Spanish, but prefers speaking in English; and that he has a very strong bond of attachment to his mother. According to the evaluator, [redacted] has anxiety related to the welfare of his mother.

[redacted] at the time of the evaluation, was a freshman at Arizona Western College and the evaluator conveys that [redacted] stated that he would most likely have to drop classes and go to work if his mother is deported as his parents are now supporting him. The evaluator states that English is [redacted] primary language and that [redacted] indicated that he is not fluent in Spanish and could not attend college in Mexico as he is doing here.

According to the evaluator, the applicant completed two years of college in Mexico and three yours of college coursework in special education and early childhood education in the United States. The evaluator conveys that the applicant has siblings residing in Mexico.

The letter from the Consul of Mexico, dated August 2, 2006, states that [redacted] could not find a job qualitatively similar to his current position in the United States and that the [redacted] family would suffer from severe acculturation.

Courts in the United States 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).

However, the fact that the applicant has a U.S. citizen child and a lawful permanent resident child is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's 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 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without his wife.

The record reflects that [redacted] is the primary provider of the family's financial resources, earning $83,004 annually. No evidence in the record establishes that the applicant's earnings are necessary to meet monthly household expenses. Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS,* 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

The record clearly reflects that the [redacted] family is very concerned about separation from the applicant. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration the submitted letters, the psychological evaluations, and the fact that the couple has a 20-year marriage and two sons. Nonetheless, the AAO finds that [redacted] situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by [redacted] while separated from his wife of 20 years, is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra.* The AAO notes that the applicant has family ties to Mexico; the grandparents of the [redacted] children and the applicant's siblings live there.

The record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined his wife in Mexico.

The conditions of Mexico, the country where [redacted] and his sons will live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, 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). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS,* 794 F.2d 491 (9th Cir. 1986).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS,* 765 F.2d 673, 677 (7th Cir. 1985). In *Carnalla-Munoz v. INS,* 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship." In a per curiam decision, *Pelaez v. INS,* 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship.

However, in *Carrete-Michel v. INS,* 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" Carrete-Michel's claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang,* 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa,* 644 F.2d at 1356-57."

[redacted] makes a claim of economic hardship stemming from an inability to find work in Mexico. The record reflects that he is 45 years old and his wife is 43 years of age. *Form I-130.* [redacted] holds a bachelor's degree and his wife has completed four years of college. The submitted information about Mexico is not persuasive in establishing that the [redacted] would be unable to find employment in Mexico. The documents provide information about Mexico's social, political, and economic conditions; but it is not specific to the individual circumstances of the [redacted] and their ability to find employment in Mexico. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS,* 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS,* 765 F.2d 673, 676 (7th Cir.1985). Furthermore, although the letter from the Consul of Mexico states that [redacted] could not find a job qualitatively similar to his current job in the United States, as held in *Marquez-Medina,* and *Carnalla-Munoz,* and *Pelaez* this difficulty does not rise to extreme hardship.

No evidence in the record conveys that any member of the [redacted] family has a severe illness that would make deportation extremely hard on the applicant's husband.

[redacted] states that his sons will endure hardship if they joined him in Mexico. 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 children, is a relevant consideration. With regard to a child's education in a foreign country, in *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir.1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS,* 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult [redacted] herself admitted that [redacted] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute." Here, the AAO finds that the fact that [redacted] has two sons is insufficient to establish extreme hardship under the Act.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 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)(6)(C) 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.

ORDER: The appeal is dismissed.