U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: NOV 02 2007

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 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 District Director denied finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated January 3, 2006.* Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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.
>
> . . .
>
> (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.
>
> . . .

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). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and ((II) are not counted in the aggregate.[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-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

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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, [redacted]

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

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 claimed to have entered the United States in 1995 using a border crossing card. It indicates that she remained in the country until March 2003, at which time she entered Mexico and subsequently re-entered the United States on March 5, 2003 with advance parole. It shows that the applicant began to accrue unlawful presence on April 15, 2000, the date when she turned 18, and the unlawful presence ended when she was granted classification as a V2 nonimmigrant on November 23, 2001. *I-485 Processing Worksheet; Decision of the District Director, dated January 3, 2006.* When the applicant departed from the United States in 2003, she triggered the ten-year bar. Thus, the finding of inadmissibility for unlawful presence is correct.

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

Section 212(a)(9)(B) of the Act 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 the 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. The qualifying relative in this case is the applicant's mother. 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).

Extreme hardship to the applicant's mother must be established in the event that she joins the applicant; and in the alternative, that she 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.

Counsel's statements on appeal are summarized as follows. The applicant is 23 years old and the qualifying relative is her 56-year-old mother who is a lawful permanent resident. Citizenship and Immigration Services (CIS) 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. Here, the applicant has an outstanding job and a limitless future, she has lived here since childhood, she has attended school here, and she cares for her mother. 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); *Salameda v. INS*, 70 F.3d 447 (7th Cir. 1995); and *Tukhowinich v. INS*, 57 F.3d 869 (9th Cir. 1985) a number of factors have been considered in the hardship determination. Health issues relating to a qualifying relative ranks as only one of the factors in establishing extreme hardship; other factors are close relatives in the United States or country of origin, separation from spouse or children, ages of the people involved, and length of residence and community ties in the United States. The applicant lives with her widowed mother who owns her own house and has resided in the United States for many years. She provides her mother with emotional support, helps with translation, and keeps her from becoming lonely. Her mother is employed with Taylor Farms and has seasonal employment for five to six months per year; the applicant pays her mother's utility bills when she is unemployed. The applicant's mother has no job, contacts, or prospects in Mexico and would not be able to find comparative work in Mexico to sustain her or her family. She would be cut off from medical or pension programs in Mexico. The age of the applicant's mother and the closed employment system in Mexico would make finding a job hopeless. Country conditions in Mexico are terrible and its government is corrupt. The case, *Matter of Cervantes-Gonzalez,* indicates that country conditions are relevant in determining hardship and factors such as culture, language, religious and ethnic obstacles must also be considered.

In an affidavit dated February 28, 2006, the applicant states that her father's murder changed her life. She states that she was raised in the United States, attending schools here; that she is active in the community; and is employed with the State of Arizona Department of Economic Security.

In an affidavit of the same date, the applicant's mother states that she had a difficult time raising three teenagers without her husband. She states that her daughter, who is employed with the State of Arizona Department of Economic Security, "is the only one that supports." She states that she has two sons and that one of her sons is married and the other serves a church mission. She indicates that the applicant is the only one supporting her when she is unemployed, paying most of the bills and expenses because her

unemployment check is not enough. She states that her daughter represents her everywhere on account of the language barrier. She states that the applicant is helping her to support her son while he serves the church.

The record reflects that the applicant is employed with the Arizona Department of Economic Security as a program services evaluator I, earning $11.2702 per hour; and it contains letters from the applicant's other employers as well.

The record contains a November 23, 2004 letter from Taylor Farms, which states that [redacted] has been employed there since January 28, 2001; that her title is "general labor"; and that she earns $7.50 per hour and is considered a seasonal employee from mid-November to mid-April.

The May 9, 2005 letter from the applicant's mother indicates that she is concerned about the well-being of her daughter and has a special relationship with her.

The April 4, 2005 letter from [redacted] the applicant's brother, attests to the good character of the applicant and he states that she has provided funds for him to serve the church for the next two years.

Letters attesting to the good character of the applicant, school records, income tax returns, wage statements, unemployment documents, photographs, information about Mexico, and other documents are also contained in the record.

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

The record fails to establish that the applicant's mother would experience extreme hardship if she remained in the United States without her daughter.

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, 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). In *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), "[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)). In *Sullivan v. INS,* 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v.*

INS, 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985) (no extreme hardship to petitioner or the couple that raised her on account of separation as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child").

The record reflects that the applicant's mother is concerned about separation from her daughter. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's mother, if she 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, which certainly will be experienced by the applicant's mother, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez, Sullivan, Guadarrama-Rogel, Banks, and Dill, supra,* finding separation of family does not constitute extreme hardship.

The applicant's mother claims that she will experience extreme hardship without her daughter's financial assistance. The record reflects that the applicant's mother is a seasonal worker, earning $7.50 per hour. However, no documentation has been submitted in the record of the monthly household expenses of the applicant's mother such as her mortgage, insurance, and utility bills; thus, the AAO cannot assess whether the applicant's mother would require financial assistance from her daughter during periods of unemployment. The AAO notes that the record contains no documentation of the financial support provided by the applicant to her mother and brother. 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 applicant has failed to establish that her mother would endure extreme hardship if she joined her daughter in Mexico.

The conditions in Mexico, the country where the applicant's mother would live if she joins her daughter, 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).

The AAO finds unpersuasive counsel's claim of economic hardship to the applicant's mother stemming from an inability to find work in Mexico and from being cut off from medical or pension programs in Mexico. Court decisions have shown that difficulties in securing employment and the hardships that are a consequence of this such as a lower standard of living and health care are insufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Carnalla-Munoz v. INS,* 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship"); *Pelaez v. INS,* 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Bueno-Carrillo v. Landon,* 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and

would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship)("It is only when other factors such as advanced age, illness, family ties, etc., combine with economic detriment that deportation becomes an extreme hardship").

The record reflects that the applicant's mother is 57 years old. *Birth Certificate.* It contains the Country Report on Human Rights Practice for 2003, the Library of Congress Country Study on Mexico, information from the Central Intelligence Agency about the United States and Mexico, and newspaper clippings on Mexico for 2004. Although these documents provide useful information on Mexico's economic and social condition, they are general in nature and are not tailored to the specific circumstances of the applicant and her mother 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).

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 removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal 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.