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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

[redacted]

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MAR 1 0 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 715 358

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:

SELF-REPRESENTED

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).

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a 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 lawful permanent resident of 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), so as to immigrate to the United States. The Officer in Charge 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 Officer in Charge*, March 30, 2007. The applicant filed a timely appeal.

On appeal, the applicant maintains that her husband is financially burdened on account of separation. She states that he cannot afford to pay someone to take care of their daughter in the United States and that her daughter is depressed because the applicant is not with them in Mexico. She declares that her husband cannot have their daughter in the United States because he works long hours and is sometimes out of town, and will need a maid to live at home to take care of their daughter. She asserts that her husband cannot live in Mexico because he will not be able to pay medical bills and room and board on the salary he will receive. She contends that he will lose his lawful permanent resident status if he lived in Mexico. The applicant states that her husband is concerned about the future of their children, especially the future of their daughter, because she may become dependent upon the government. She indicates that the doctor told her that children who take medication for depression may be at risk of developing depression when older. The applicant asserts that her son is depressed because her husband takes only their daughter to the United States. She claims that her son will not be able to immigrate to the United States if she does not immigrate because he was included in her petition. She asserts that her children were doing well in school in the United States and now their dreams are destroyed. She contends that they need to be educated in the United States because its schools are better.

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 entered the United States without inspection in July 2000 and remained in the country until April 2006, when she left the country and triggered the ten-year bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. 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 [redacted], the applicant's lawful permanent resident husband. 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. However, the AAO notes that the record contains a letter dated April 27, 2006 by [redacted] that 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 USCIS 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 letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

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 her to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of an applicant's waiver request.

In a letter submitted on appeal [redacted] claims that he is experiencing financial hardship remaining in the United States without the applicant because he cannot support two households: his in the United States and his wife's in Mexico. Furthermore, he asserts that his six-year-old daughter, who is a U.S. citizen, cannot live with him in the United States because he is unable to afford a maid to take care of her. However, as [redacted] has provided no documentation of his income (such as income tax records and wage statements) and his household expenses (such as rent, mortgage and utility, childcare, and telephone invoices) to demonstrate that he is unable to afford childcare for his daughter and does not earn enough money to support his family in Mexico, his assertion about financial hardship carries less weight in the hardship analysis. Furthermore, it is noted that [redacted] states that he had employed a maid to take care of his daughter.

[redacted] contends that separation is affecting him and his children. He claims that he brought his daughter to the United States and took her back to Mexico because she was depressed and did not want to eat or obey the maid, refused to attend school, and wanted her mother. He avers that his work performance has been impacted because a doctor informed him that his daughter has depression, requires physiological treatment, and the medication used to treat depression can impact small children, which impact may cause suicidal tendencies when older. [redacted] claims that because his daughter requires treatment in the United States he will need a maid and will be required to work part time in order to take his daughter to doctor appointments and to school. He affirms that his son, who is ten years old, is becoming depressed and refuses to eat and that he will have to pay for extra-curricular activities so that he will not fall into a depression like his daughter, who will need anti-depressants if the waiver application is denied.

Family separation must be considered in determining hardship. *See 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 caused by family separation. [redacted] provides a detailed letter wherein he describes his concern about his daughter having to undergo treatment for depression, his son's mental health, and his ability to financially support his family. The record contains a letter by [redacted] with [redacted] dated March 24, 2006, which conveys that the applicant's daughter was enrolled in a child development program for the 2005-2006 program year, effective September 19, 2005, in the United States. The record also contains a letter dated March 30, 2006 by [redacted] This letter states that the applicant's son attended the school since 2002 through March 2006. However, because the record lacks any documentation by a mental health professional or physician relating to the depression of [redacted] daughter, the AAO finds that this hardship factor carries less weight in the hardship determination. Although [redacted] is concerned about meeting financial obligations, as previously stated, there is no documentation in the record to corroborate his claim of financial hardship. The AAO acknowledges that as a result of family separation [redacted] will experience emotional hardship. However, he has not provided any corroborating documentation in support of his emotional hardship claim such as documentation of his daughter's depression, his inability to meet financial commitments, and the impact of family separation on his employment. In the absence of such documentation, he has failed to show that his emotional hardship, as a result of remaining in the United States without his wife, is unusual or beyond that which is normally to be expected from an applicant's bar to admission.

When the AAO considers the hardship factors in the aggregate, which factors are [redacted] concern about his children's mental health, his ability to meet financial obligations, and separation from his family members, the AAO finds that they fail to demonstrate extreme hardship to [redacted] if he remains in the United States without his wife. In the absence of evidence such as an evaluation and diagnosis of depression of [redacted] daughter by a mental health professional, financial records, or a letter from his employer describing the impact family separation has had on his employment, the AAO finds that the hardship claims relating to [redacted] daughter, to financial concerns, and to employment carry less weight in the hardship analysis. Although we recognize that [redacted] will experience emotional hardship due to separation from his family members, he has not provided sufficient corroborating documentation to show that his emotional hardship, as a result of remaining in the United States without his wife, is unusual or beyond that which is normally to be expected from an applicant's bar to admission.

[redacted] claims that he cannot live in Mexico because he is a resident of the United States and because he will not earn the same income in Mexico as in the United States. The applicant contends that her husband will lose his lawful permanent resident (LPR) status if he relocated to Mexico. That [redacted] may lose his LPR status and the benefits he derives from that status if he joined his wife to live in Mexico may be considered a hardship, but is also a hardship common to all waiver cases in which the qualifying relative is an LPR. Considered alone, it is not sufficient to establish that the applicant would experience extreme hardship if he relocated to Mexico to live with his wife. [redacted] needs to demonstrate that he would experience additional hardship, besides the mere loss of LPR status, in order to show extreme hardship.

The applicant has not demonstrated extreme hardship to her husband if he joins her to live in Mexico, and if he remains in the United States without her. Consequently, the factors presented in this case do constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose is 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.