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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 22 2010

CDJ 2004 774 157

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 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] a naturalized citizen 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 director concluded that the applicant had failed to establish that her 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 May 31, 2007. The applicant filed a timely appeal.

On appeal, [redacted] states his son's health has been impacted by separation from the applicant. He indicates that his son has Type 1 Diabetes and requires supervision for maintaining a strict diet and taking insulation, and that his job does not allow him to supervise his son. He claims that together he and his wife monitor and supervise his son's health. He states that when his wife was with them his son's health improved and he lived a normal life. [redacted] conveys that his son's physician advised him that hypoglycemia is a serious condition.

The AAO will first address the finding of inadmissibility. 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 accrued unlawful presence from January 2002 when she entered the United States without inspection, until

July 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, 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 unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her stepson 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. 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 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.

The AAO notes that the letter dated July 2006 by 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 the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] 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 July 2006 letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

With regard to the hardship experienced by [redacted] if he remained in the United States without his spouse, the letter dated May 2, 2007 by [redacted] with Children's Hospital and Regional Medical Center states that the applicant is needed to ensure consistent management of [redacted] health care, as he has Type 1 Diabetes, a lifelong chronic illness that requires monitoring daily blood sugar, monthly clinic visits, insulin injections, and exercise and dietary control. The July 24, 2006 letter by [redacted] and [redacted] states that the applicant has been the primary caregiver for [redacted] for the past two years, along with father. They state that diabetes care should be shared between children and their parents until they are at least 18 years of age and that teenagers struggle with diabetes tasks and need the supervision of an adult. [redacted] and [redacted] state that because [redacted] mother is not the custodial parent and lives out of state, and [redacted] father works during the day, the applicant has taken up this role. They state that diabetes is a manageable disease, but can become out of control in a short period of time, whereby a young people becomes vulnerable to cardiovascular and renal complications or diabetic ketoacidosis (not enough insulin), which must be treated immediately to prevent hospitalization and injury. The record contains medical records of The document dated February 14, 2006 conveys that is entering puberty at this point, which does mean he will require more insulin and that his management will generally be more problematic." The February 2, 2007 letter by [redacted] conveys that the applicant provides a prescribed diet for [redacted]

The letter by [redacted] with [redacted] dated May 10, 2007, conveys that [redacted] is the lead person for the antifouling paint and exterior detailing crew and that his spouse is needed in the United States to provide home and emergency care for [redacted] He states that [redacted] has lost income and the company has lost production time due to his son's medical appointments, which require a full day off work, and due to his son's emergency situations, which occur in the early hours before work, during the middle of the work day, and at other times. In his July 27, 2006 letter, [redacted] conveys that there is no family leave provided for [redacted] absences, and his presence at work is needed for the smooth functioning of his department; unplanned absences affect his employer negatively.

Based upon the aforementioned documentation, which describes the serious health problems of the applicant's stepson, and demonstrates that the applicant has been his primary caregiver, the AAO finds that the applicant has established that her husband would experience extreme hardship if he were to remain in the United States without having her to serve as the primary caregiver of his son.

The July 24, 2006 letter record conveys that the biological mother of the applicant's stepson lives out of state and is not the custodial parent. The record reflects that together with the applicant, [redacted] has been actively involved in the management of his son's health care. The record shows that his son has a lifelong chronic illness that requires monitoring of daily blood sugar, insulin injections, clinic visits, and requires special care and monitoring whenever he becomes ill. In view of the serious health problems of [redacted] son, the AAO finds that [redacted] would experience extreme emotional hardship without the applicant to assist in caring for his son or if he were separated from his son and not available to take care of him.

However, the applicant has not demonstrated that [redacted] would experience hardship if he joins the applicant in Mexico and his son accompanies him. There is no indication that his son would remain in the United States if [redacted] relocated to Mexico.

Thus, the applicant has not demonstrated extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.