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U.S. Citizenship  
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H<sub>2</sub>

FILE:

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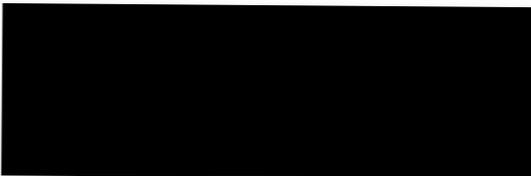
Date: **AUG 10 2009**

IN RE:



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:



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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico. The matter 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. He 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)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. 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), in order to return to the United States to join his United States citizen wife, [REDACTED] and U.S. lawful permanent resident parents, [REDACTED] and [REDACTED].

The District 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 Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant and his spouse have been struggling for three years to find work in Mexico and have an income barely enough to survive. Counsel states that the applicant's son is now of school age and they can no longer stay in Mexico without an affect on their son's education. Counsel states that the AAO should consider the applicant's long relationship with his spouse, that his parents are U.S. lawful permanent residents, that he has resided in Mexico for over three years without violating law, that he has no other grounds of inadmissibility, that he is a person of good moral character, that his lack of education impedes him to have good economic opportunities, that he did not know of his prior 1998 deportation, and that he does not have a habitual behavior of breaking immigration law. As corroborating evidence, counsel furnished letters from the applicant's spouse, the applicant's parents, his employer, a Hispanic Service Center, and country condition reports. The entire record was reviewed and considered in rendering a decision on the appeal.<sup>1</sup>

The AAO notes that the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, and a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Counsel filed only one appeal and indicated that the appeal was filed in connection with the denial of both applications. In situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the

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<sup>1</sup> The record contains several letters written in Spanish without accompanying English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

decision is final), deny the Form I-212 since its approval would serve no purpose.” Thus, based on this rule, in a situation like the applicant’s, where there is one appeal that has been filed and either the Form I-212 or the Form I-601 could be considered on appeal, the AAO will review the Form I-601.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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

(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 the Secretary of 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 [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 record reflects that the applicant is a native and citizen of Mexico who arrived in the United States without inspection in March 1993. The applicant filed an asylum application on October 19, 1994. On December 5, 1997, the applicant was placed in removal proceedings for failing to appear for his asylum interview. On July 30, 1998, the Immigration Judge ordered the applicant removed *in absentia* for failing to appear at the hearing. On May 2, 2001, the applicant filed a Form I-485, Application to Adjust Status, based on an underlying form I-130, Petition for Alien Relative, filed by his U.S. citizen spouse. On April 6, 2004, the Detroit District Director terminated the adjudication of the applicant’s adjustment application because of his outstanding order of deportation. On April 13, 2004, the applicant was removed to Mexico pursuant to his final order of deportation. The applicant accrued unlawful presence from the date he was ordered removed by the Immigration Judge, July 30, 1998, until he departed the United States on April 13, 2004. As such, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme

hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that the applicant wed [REDACTED], a naturalized U.S. Citizen, on November 13, 1998. The applicant’s spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and his spouse have a nine year old U.S. citizen child, [REDACTED]. Hardship to the applicant’s child will be considered insofar as it results in hardship to the applicant’s spouse. The applicant has also listed his parents, [REDACTED] and [REDACTED], as U.S. lawful permanent residents on his waiver application. Lawful permanent resident parents are qualifying family members for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. However, the record does not contain any evidence of their identity and status as lawful permanent residents. Therefore, hardship to the applicant’s spouse will be given primary consideration in these proceedings.

The applicant’s spouse asserts in the letter she filed with the waiver application that after the applicant was sent to Mexico she felt very sad. She states that her son cried a lot and did not want to eat and sleep. She states that in order to keep their home from breaking apart, she and her son accompanied the applicant to Mexico. She notes that the economic situation in Mexico is critical and there are not sufficient jobs. She requests an approval of the waiver application so her son can get a better education. The applicant’s spouse asserts in her letter filed on appeal that she is living in a rural town in Mexico that

does not have good quality schools. She states that she wants to give her son a good education and is concerned that her son will not be able to learn normally when he goes back to the United States if he has no opportunity for education right now.

The AAO will consider financial hardship as a factor in establishing extreme hardship to a qualifying relative. However, the evidence of financial hardship in the present case is not demonstrated by the record. The record does not indicate whether the applicant and his spouse are currently employed in Mexico. Nor does it discuss their occupations, earnings, and standard or quality of living as evidence of hardship. As corroborating evidence the record contains an offer of employment to the applicant from Artistic Concrete Innovations L.L.C., located in Casco, Michigan, and reports that discuss economic conditions in Mexico. The AAO has reviewed these reports and finds that while they provide a general description of the economic climate in Mexico, counsel has failed to link the generalizations to the applicant and his spouse's specific situation. Therefore, the AAO cannot conclude, based on the record, that the applicant's spouse is facing financial hardship due to the applicant's inadmissibility.

The AAO recognizes that the refusal of the applicant's admission to the United States may result in the loss of his spouse's academic aspirations for their son. However, this factor does not necessarily rise to the level of extreme hardship. Their situation is typical of individuals who decide to relocate abroad due to their spouse or parent's inadmissibility. Further, the AAO finds that the evidence of hardship to the applicant's child, and resulting emotional hardship to his spouse, is not demonstrated by the record. The applicant's spouse indicates in her appeal letter that her son attends daycare and she is concerned about his future education. Since her son was not enrolled in the school system at the time of her letter, her concerns are speculative in nature. Consequently, the AAO does not find that the record demonstrates hardship to the applicant's spouse based upon the lack of educational opportunities for her son.

Moreover, the AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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 recognizes that the applicant's spouse and child would suffer emotionally if they were separated from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and

financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Finally, the record contains a letter from the applicant’s parents. As previously stated, the record does not contain any evidence of their identity and status as lawful permanent residents. However, the AAO will, for the purpose of considering the record in its entirety, note the assertions contained in their letter. The applicant’s parents assert that the applicant helps drive them to the doctor’s office and food shopping. They state that the applicant translates for them, and helps with the house bills because they cannot read, write or speak English. The AAO finds that the record does not fully demonstrate the applicant’s parents’ reliance on the applicant. There is no indication of their age, where they live, when they first entered the United States, whether they have any other family members residing in close proximity, and whether they could relocate to Mexico. Without a full picture of their lifestyle and dependence on the applicant, the AAO cannot conclude that they are suffering from extreme hardship due to the applicant’s inadmissibility.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s wife faces extreme hardship if the applicant is refused admission to the United States. 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. Therefore, the letter from the applicant’s former employer, [REDACTED] Aquino Cement, Inc., and [REDACTED] Hispanic Service Center, which discuss the applicant’s good character, will not be addressed in these proceedings.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.