



U.S. Citizenship  
and Immigration  
Services

H<sub>2</sub>

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 03 2009  
CDJ 2004 782 655

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)

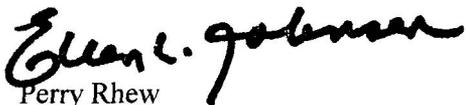
ON BEHALF OF APPLICANT:

[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.

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).

  
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 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 his 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 District Director*, dated February 9, 2007. The applicant filed a timely appeal.

On appeal, counsel states that [REDACTED] has relied on her husband to assist in the care of [REDACTED] her daughter, who has cerebral palsy. Counsel states that [REDACTED] works full time and [REDACTED] sister helps [REDACTED] during the day. He states that it has been difficult for [REDACTED] to obtain an employer who is tolerant of [REDACTED] missing work due to [REDACTED] medical needs. Counsel states that [REDACTED] was less concerned about her job prior to the applicant's departure because he assisted with [REDACTED] and could work while [REDACTED] found another job. Counsel states that [REDACTED] takes care of her daughter day and night. He states that [REDACTED] receives governmental assistance of \$623 each month, but this is not enough to cover rent and food. Counsel states that the applicant and his wife were in the processing of purchasing a home prior to his leaving the United States and that [REDACTED]. [REDACTED] lost the house and now rents an apartment. He states that [REDACTED] cannot live in an environment that would contaminate her shunt or cause her to become sick. Counsel states that the applicant has helped take care of [REDACTED] for the last six years and [REDACTED] is suffering extreme hardship without him.

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

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

(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 1996. For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>1</sup> The applicant, therefore, accrued unlawful presence from April 1, 1997 until March 2006, and when he left from the United States he triggered the ten-year-bar, rendering him 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 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 his step-children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. 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-Morales*, 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-*

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<sup>1</sup> Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act; AFM Update AD 08-03; May 6, 2009.

*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 including [REDACTED] psychological assessment and medical records, and the March 30, 2006 and April 17, 2006 letters by [REDACTED].

The psychological assessment of [REDACTED] dated January 25, 2007, conveys that [REDACTED] is 20 years old, and is reportedly not ambulatory, functions intellectually within the moderate to severe range of mental retardation and is nonverbal, and requires assistance in all areas of daily living. The assessment conveys that [REDACTED] receives in-home physical therapy services from her sister, who serves as her personal care provider and cares for [REDACTED] full time.

Collectively, the March 30 and April 17 letters by [REDACTED] convey that the applicant has a job awaiting him in the United States, she supports herself as well as helps her husband support his family in Mexico, and her husband helped [REDACTED] in her everyday routine and has a close relationship with [REDACTED]. [REDACTED] conveys that the applicant assisted her in raising her son, who is becoming unruly.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she 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.

[REDACTED] letter of March 30, 2006 indicates she does not require financial assistance from the applicant in order to meet her monthly financial obligations, as she is supporting both herself and the applicant's family in Mexico.

[REDACTED] indicates that she and her children have a close relationship with the applicant. Family separation must be considered in determining hardship. *See, e.g., 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 (9<sup>th</sup> 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).

Although [REDACTED] indicates that the applicant assisted her in the care of [REDACTED] the psychological assessment conveys that [REDACTED] is taken care of full time by her sister, who is [REDACTED] personal care provider. While the AAO is sympathetic to [REDACTED] situation, the record does not establish that the applicant is required to care for [REDACTED]. The record, therefore, fails to establish that the situation of [REDACTED] if she remains in the United States without her spouse, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [REDACTED] is unusual or beyond that which is normally to be expected from an applicant’s bar to admission. *See Hassan and Perez, supra*.

There is no claim made of extreme hardship to [REDACTED] if she were to join her husband to live in Mexico.

When considered both individually and collectively, the hardship factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 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 he 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.