



U.S. Citizenship  
and Immigration  
Services

H2

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 04 2009  
CDJ 2005 524 188

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),  
8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality Act.

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).

A handwritten signature in black ink, appearing to read "Perry 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 daughter 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 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 November 14, 2006. The applicant filed a timely appeal.

On appeal, [REDACTED] states that he works full time and it would be a hardship if his daughter is not with him because she is needed to take care of his 12-year-old son, who is a U.S. citizen, and [REDACTED] his U.S. citizen daughter. He states that his wife resides in Mexico and that he will file the Form I-130, Petition for Alien Relative for her and during its processing the applicant would help with the children. [REDACTED] states that every day he delivers his son and daughter to his wife at the border, and picks his children up the next morning to attend school in El Cajon, California. He states that he will not leave his children unsupervised and at times he is unable to take his children to doctor appointments or attend school meetings because of his job.

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.

....

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in April 2001 and remained in the country until March 2005. The applicant accrued unlawful presence from March 27, 2002, when she turned 18 years old, to March 2005, and triggered the ten-year-bar when she left the United States, 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), which 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 the applicant’s naturalized citizen father. 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-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.

The AAO notes that the record contains a letter by [REDACTED] dated December 7, 2005 which 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 December 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 father 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.

conveys that he needs his daughter to take care of his children while he works. Although [REDACTED] does not have his daughter's assistance, he routinely takes his children to school in El Cajon, California, and has his wife in Mexico take care of the children. In view of this arrangement, the AAO finds that [REDACTED] will not experience extreme hardship if he were to remain in the United States without his daughter.

There is no claim made of extreme hardship to [REDACTED] if he joined his daughter to live in Mexico.

The 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 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.