



U.S. Citizenship  
and Immigration  
Services

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**NOV 06 2009**

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
CDJ 2004 737 559

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:

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 December 15, 2006. The applicant filed a timely appeal.

On appeal, counsel states that the director erroneously applied the incorrect hardship standard and relied on outdated decisions. Counsel states that extreme hardship has been found in court decisions that did not involve deportation or removability on account of criminal grounds. Counsel states that the applicant's spouse and children have experienced hardship since the applicant left the United States two years ago. She states that the applicant's five-year-old son no longer wishes to speak to the applicant when he telephones. Counsel asserts that family unity is the corner-stone of U.S. immigration law and if the applicant's son is not re-united with his father, the family and community will suffer. Counsel contends that the applicant was deprived of due process of law because in denying the waiver application the director used boilerplate language and failed to adequately state the basis for the denial.

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 April 1988 and remained in the country until March 2006. The applicant accrued unlawful presence from April 1, 1997, the date the provisions of section 212(a)(9)(B) of the Act went into effect, to March 2006, and triggered the ten-year-bar when he left the United States, 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), 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 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 child 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-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 the declaration and letter by the applicant’s spouse, the school report, the doctor’s note, and other documents.

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.

With regard to remaining in the United States without her husband, in her letter dated March 21, 2006, the applicant’s wife conveys that she and her two children have a close relationship with the applicant. She states that her husband had financially supported the family while in the United States. She conveys that she now lives with her sister and brother-in-law and has two jobs and is on welfare. The applicant’s wife conveys that she earns \$300 every other week and barely makes ends meet. Her husband, she states, earned \$400 a week in the United States. The record, however, contains no documentation of the assistance that the applicant’s spouse claims to receive from the U.S. government. It has no documentation of the income and expenses of the applicant’s spouse. Without such documentation, the applicant’s spouse fails to demonstrate that she would experience extreme financial hardship if she remained in the United States without her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant’s spouse indicates that her five-year-old daughter is not doing well in school as a result of separation from her father. The record contains a school report of the applicant’s daughter, which indicates that she talking too much. In her declaration dated February 8, 2007, the applicant’s spouse states that the children have taken separation from their father hard.

The applicant’s wife indicates that if she remains in the United States she and her children will be separated from 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).

The applicant’s wife indicates that she is very concerned about separation from her husband and its impact on their two children. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record before the AAO, however, fails to establish that the situation of the applicant’s wife, if she remains in the United States without her husband, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by the applicant’s spouse is unusual or beyond that which is normally to be expected from an applicant’s bar to admission. *See Hassan and Perez, supra*.

With regard to joining her husband to live in Mexico, the applicant’s wife indicates that finding employment in Mexico is difficult, and that she would have to work twice as hard in Mexico for less money if she did obtain employment. However, no documentation has been provided to establish that the applicant and his wife would be unable to find employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The applicant’s wife indicates that her children have asthma, and in the United States have medication in case they need it. She states that in Mexico they would not have access to health insurance or assistance from the government. She states that they would not have the same level of health care in Mexico that they now have. No evidence has been presented to establish that the applicant’s spouse would not have access to healthcare or the same level of healthcare in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The applicant’s spouse conveys that her parents rely upon her for driving to doctor’s appointments and translating. She states that her father has arthritis in his knees and will require surgery soon and will need her help. The applicant’s spouse has provided no documentation of her father’s health problems and has not explained why her sister would be unable to assist their parents if she were in Mexico.

The applicant’s wife indicates that her children will not be prepared to attend school in Mexico because they do not speak Spanish and states that higher education is more attainable in the United States. She states that her children would have a difficult time adjusting to life in Mexico because their friends, family and life are in the United States and they would not feel secure in a foreign land. However, the applicant’s wife has not explained how she would experience extreme hardship based on her children attending school in Mexico. The AAO notes that the record conveys that the applicant’s spouse and children will not be alone in Mexico. They will be with the applicant and his family members.

In view of the hardship factors raised in this case, when those factors are considered collectively, the AAO finds they fail to establish extreme hardship to the applicant's spouse if she were to remain the United States without her husband, and if she were to join him to live in Mexico.

Thus, the hardship factors 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) 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. The waiver application is denied.