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U.S. Citizenship  
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

CDJ 2004 815 758

IN RE: Applicant:

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).

John F. Grissom,  
Acting 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's spouse, [REDACTED] is a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act 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 May 9, 2007.* The applicant filed a timely appeal.

On appeal, [REDACTED] indicates that he has been separated from his wife for over one year and managed to visit her twice in Mexico. He states that she lives with relatives in a poor town where the water is not drinkable and rain brings scorpions and snakes into the house. [REDACTED] conveys that the town has a small clinic with limited medicine and with the closest hospital is two hours away. He states that there is no way to earn a living in the town. [REDACTED] states that he brought his mother from Peru and she has been living with him for four years. He states that his mother cannot work because she is sick and that his wife's situation will mean that his mother will go back to a poor country. [REDACTED] states that he suffered a knee injury that will require surgery and recuperation without working for one to two months. He states that he has not undergone knee surgery because he wants his wife to support him. [REDACTED] conveys that he and his wife would like to start a family.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9) 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.

....

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in May 2000 and remained until October 2005. The applicant accrued five years of unlawful presence from May 2000 until October 2005, and triggered the ten-year-bar when she left the country, 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. Thus, hardship to the applicant 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-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).

The evidence in the record consists of photographs; letters by the mother, brother, and sister-in-law; money transfers; telephone invoices; magazine covers; an evaluation by an orthopedic surgeon; a document by the Department of the Navy; a letter dated November 16, 2005 by a naturalization certificate; a birth certificate, a marriage certificate, and other documentation. 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.

It is noted that the letters by mother, brother, and sister-in-law are not accompanied by an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to the Service [now U.S. Citizenship and Immigration Services, "USCIS"] 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.

As the letters mother, brother, and sister-in-law are without an English translation, their letters will carry no weight in this decision. *See*, 8 C.F.R. § 103.2(b)(3).

The physical examination of by dated January 18, 2006, reveals that recommends an anterior cruciate ligament (ACL) reconstruction of Mr. right knee with autograft, and possible meniscus repair. He states that the surgical risks include, "but are not limited to, bleeding, infection, stiffness, pain, re-injury as well as the intended benefits and the usual routine postop course."

is very concerned about separation from his wife; he conveys that he has delayed knee

surgery because he wants his wife to support him. 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 (9th 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 AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. The record before the AAO, however, fails to establish that the situation of [REDACTED] if he remains in the United States without his wife, 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*. Furthermore, although [REDACTED] has delayed having knee surgery in order to have his wife there to support him, he has not explained why his mother would be unable to take care of him after his operation.

[REDACTED] has not indicated that he would experience any financial hardship if he were to remain in the United States without his wife.

When considered in the aggregate, the AAO finds that the submitted evidence and hardship factors fail to establish extreme hardship to [REDACTED] if he were to remain in the United States without his wife.

With regard to joining his wife to live in Mexico, [REDACTED] indicates that he brought his mother to live with him in the United States and that she has been living with him for four years. It is noted that the Form I-130, Petition for Alien Relative, reflects that [REDACTED] filed a Form-130 in September 2001 on behalf of his mother, who is now a permanent resident of the United States. [REDACTED] states that he supports his mother because she is unable to work due to health problems; however, he does not submit any documentation of her health problems. The AAO notes that [REDACTED] has a brother, a naturalized citizen of the United States, whose driver's license reflects that he lives in the same household as [REDACTED] however, [REDACTED] does not explain why his brother would be unable to financially support their mother. [REDACTED] describes the living conditions of his wife and he states that her town has a clinic with limited supplies and the nearest hospital as two hours away. The AAO finds that [REDACTED] has not established he would experience extreme hardship if he were to join his wife to live in Mexico because he has not shown that he must live in his wife's town or is even considering having the surgery performed in Mexico.

Based on the record, 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.