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**U.S. Department of Homeland Security**
U.S. Immigration and Citizenship Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 788 651

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, 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 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 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 October 6, 2006. The applicant filed a timely appeal.

On appeal, counsel states that all of family members are U.S. citizens and that he lives with his mother and his sister and her husband and children; and his in-laws, with whom he has a close relationship, live nearby. Counsel states that mother is diabetic and had two heart attacks in 2006 and that takes care of his mother by checking her sugar levels, administering her medication, and taking her to the doctor. Counsel states that needs his wife to assist with the care of his mother. Counsel indicates that and his wife have a son, who was born in 2003. Counsel states that financially supports his wife and son, who live in Mexico, and that he is experiencing extreme hardship supporting them. Counsel indicates that mother would not be able to travel to visit if he moved to Mexico and she states that is Puerto Rican and has no cultural or social connection to Mexico and would be discriminated against, and would be ineligible for health care in Mexico. She states that he has only a sixth grade education and works as a landscaper and has no skill that would make him more eligible for a job in Mexico than other people. Counsel indicates that half of the population in Mexico lives in poverty and has been unable to find employment there. Counsel states that economic conditions in Mexico prevent from relocating there; he must financially support his wife and son from the United States. Counsel states that would experience anguish if his son lived in a rural area without proper food, sanitation, medical care, and education. Counsel states that would not be able to take care of his son in the United States and would not be able to afford a nanny or day care, which would cost over $16,000 a year. Counsel states that mother cannot take care of her grandson because of her health.

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 accrued unlawful presence from February 2001, when she entered the United States without inspection, until October 2005, when she left the country and triggered the ten-year-bar, 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. 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 her 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-Moralez,* 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 medical bills, birth certificates, letters, photographs, a contract, an affidavit, remittances, income tax records, the country profile on Mexico by the Library of Congress, the document about depression, and other documentation.

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.

With regard to remaining in the United States without his wife, [redacted] states in his affidavit dated November 2, 2006, that he is financially drained supporting his wife and son while supporting himself and paying his mother's medical bills. The letter by [redacted] dated October 24, 2006, conveys that [redacted] earns $10.25 per hour and worked 390 hours overtime last year. The medical bills for [redacted] mother, [redacted], are for services rendered on March 2006 and total approximately $1,110. The remittances to [redacted] in Mexico total $710. There is no documentation of the household expenses of [redacted] The AAO finds that the submitted documentation is not sufficient to establish that [redacted] income is insufficient to support himself and his wife and son in Mexico. Furthermore, [redacted] has not explained why his other siblings would be unable to financially assist their mother. 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).

Although [redacted] claims that he is concerned about his son living in a rural area in Mexico without proper food, sanitation, medical care, and education, there is no documentation showing that his son lives in such conditions. 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.*

If son were to live with him in the United States, counsel indicates that would not be able to afford childcare services. The record contains a blank referral agreement in which Midwest Nannies, Ltd. States it is to be paid a 10% referral fee to find a childcare provider with a minimum fee of $1600. The submitted contract is to find a nanny. No documentation was submitted regarding other less expensive childcare options, therefore the record fails to demonstrate that income is not sufficient to pay a childcare provider.

states that his mother is unable to assist him in taking care of their children because of her health problems. The record contains medical invoices, but it has no documentation from a treating physician establishing the specific condition of mother, who he indicates lives with him. 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 AAO notes that although lives with other family members, he has not explained why none of them would be able to assist in the care of his child.

is concerned about separation from his wife. 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 family separation. The record before the AAO, however, fails to establish that the situation of , if he remains in the United States without his spouse, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by 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 his wife to live in Mexico, indicates that he would miss his family in the United States if he moved to Mexico. The AAO acknowledges that has a close relationship with his family members in the United States; however, he would not be alone in Mexico as he would be his wife, son, and mother-in-law. The record does not establish that . separation from his family would cause him more hardship than that normally experienced in similar situations.

The AAO finds that no documentation was submitted into the record in support of counsel's assertion that would be discriminated against in Mexico and would be ineligible for health care. 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.*

states in his affidavit that except for working in the fields, which is not enough to support his family, there is no work where his wife resides. Counsel states that has only a sixth grade education and is a landscaper has no skills that would distinguish him. The country profile on Mexico states that nearly half of the population in Mexico lives in poverty. However, economic detriment alone is insufficient to establish extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981).

When the hardship factors presented in this case are considered both individually and collectively, the AAO finds those factors do not 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) 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.