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U.S. Citizenship
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Services

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FILE:

CDJ 2004 655 221

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

NOV 25 2009

IN RE: Applicant:

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); and section 212(i) of the Act, 8 U.S.C. § 1182(i)

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).

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; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), 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 December 6, 2006. The applicant filed a timely appeal.

On appeal, [REDACTED] states that his life has been difficult without his spouse as he is the financial provider and father and mother to his U.S. citizen daughter and step-son. He states that his children have asthma and his step-son's grades have dropped due to separation from the applicant. [REDACTED] conveys that his mother lives with him, and is unable to assist with the children because the left side of her body has little movement as a result of a stroke. He states that his wife had taken care of his mother. [REDACTED] indicates that he and his wife fight constantly because he cannot accommodate his wife in taking their children to see her every day. [REDACTED] states that he is having problems at work because he stays home when his children are sick and states that he has requested special shifts because his children need him. He states that he takes medication for headaches. [REDACTED] indicates that he would leave everything behind if he moved to Mexico. He claims that his children cannot attend school in Mexico because they are not residents of that country and he conveys that he wants his children educated in the United States.

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 June 2000, when she entered the United States without inspection, until November 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) of the Act, 8 U.S.C. § 1182(a)(9)(B), which provides:

- (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 director also found the applicant to be inadmissible under section 212(a)(6)(C) of the Act. That section provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record conveys that the applicant attempted to gain admission into the United States by presenting at a port of entry a border crossing card that did not belong to her. Based on this fact, the AAO finds the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of her true identity so as to procure admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act will both be addressed in this decision. Waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act require the applicant to show that the bar to admission imposes extreme hardship to the 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 sections 212(a)(9)(B)(v) and 212(i) of the Act. Hardship to [REDACTED] and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED]. [REDACTED] 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 medical records, birth certificates, a naturalization certificate, the letters by the Clinicas de Salud Del Pueblo, Inc., the letter by United Food and Commercial Workers International Union (UFCW), the letters by [REDACTED] 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, in his letter [REDACTED] states that taking care of his children has caused him to have frequent headaches, fatigue, and exhaustion. The record shows that [REDACTED] six-year-old son and 19-month-old daughter have been treated for asthma. *Letter by the [REDACTED] dated January 9, 2007; Medical Records.* The letter by the local president of the United Food and Commercial Workers International Union dated January 18, 2006 states that [REDACTED] was an outstanding union employee, but in the year 2006 the union represented him for disciplinary actions related to attendance. The local president states that [REDACTED] work performance has changed and traveling to Mexico is his major issue. The local president states that the union is representing [REDACTED] in his request to change to a day shift because [REDACTED] expressed that it is difficult taking care of his children while working rotating shifts.

The AAO observes that the record is silent as to who takes care of [REDACTED] children while he is at work. Although [REDACTED] states that his mother, who lives with him, cannot take care of her grandchildren due to her health, no medical records of her condition have been submitted into the record. 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).

[REDACTED] is concerned about separation from his wife. [REDACTED] and [REDACTED] with the Clinicas de Salud Del Pueblo, Inc. state in a letter dated January 24 2007, that [REDACTED] has been under a physician's care for the past six months for management of hypertension and they indicate that that he had a recent diagnosis of anxiety disorder.

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 [REDACTED] 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 [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, even though [REDACTED] was diagnosed with anxiety disorder, [REDACTED] indicates that he and his children have regular contact with the applicant who lives nearby.

The AAO finds that no documentation was submitted in the record in support of [REDACTED] assertion that his children cannot attend school in Mexico because they are not residents of 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*. Although [REDACTED] states that wants his children educated in the United States, he does not describe the hardship he would experience if they were not educated here.

When the hardship factors presented in this case are considered collectively, the AAO finds those factors do not constitute extreme hardship to a qualifying family member for purposes of relief under sections 212(a)(9)(B)(v) and 212(i) of the Act.

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 sections 212(a)(9)(B)(v) and 212(i) 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.