

U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

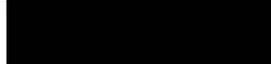


**PUBLIC COPY**



H2

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

NOV 25 2009

CDJ 2004 823 426

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:



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 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 his 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, counsel contends that the director erred as a matter of law by not issuing a request for evidence as required by 8 C.F.R. § 103.2(b)(8), by denying the waiver application, and by failing to determine whether a favorable decision is warranted as a matter of discretion. Counsel states that [REDACTED] works at a gas station in Chihuahua, Mexico and his closest family members live two hours away. She states that [REDACTED] barely supports himself. Counsel states that [REDACTED] came to the United States when she was twelve and has a close relationship with her parents, siblings, and relatives. Counsel conveys that the intellectual and emotional progression of [REDACTED] U.S. citizen son, has been affected due to separation from his father, [REDACTED], and hardship to a non-qualifying relative that directly affects a qualifying relative must be considered in determining hardship. She states that [REDACTED] has a strong family network in Denver and no family members in Mexico. Counsel states that [REDACTED] is a special needs child and the educational system in Mexico cannot cater to [REDACTED] needs without financially burdening his family. Counsel states that Ms. [REDACTED] would have difficulty finding work in Mexico because she has no special skills or higher education. She states that [REDACTED] has depression due to her choice of having to separate from either her husband or family members in the United States and the loss of the value of her U.S. citizenship if she were to live in Mexico.

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 December 1999, when he entered the United States without inspection, until October 2004, when he left the country and triggered the ten-year-bar, 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 [REDACTED] and his son 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).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including the affidavit, letters, income tax records, the school progress report, drawings, the psychological evaluation, and other documentation.

The AAO disagrees with counsel's claim that the applicant did not have an opportunity to provide additional evidence in support of his waiver application. A notice that accompanied the Form I-601 stated that the claim of hardship must be supported by documentary evidence or an explanation specifying the hardship and gave the applicant 30 days from the date of the letter in which to submit his response.

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.

██████████ indicates in her affidavit that as a result of remaining in the United States without her spouse she now has to work and live with her parents to support herself and her son and is forced to apply for food stamps. An employment letter in the record, which is dated December 28, 2006, shows that ██████████ started working for WIS International on July 20, 2006 and is training to become a crew manager. The record contains no documentation of ██████████ financial obligations, income with WIS International, or application for governmental assistance. 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). In the absence of such financial documentation, the record fails to demonstrate that ██████████ would experience extreme financial hardship if she were to remain in the United States without her husband.

The record contains a psychological evaluation dated December 30, 2006 by ██████████, a licensed psychologist. ██████████ states that ██████████ referred her son to the Denver Public Schools Child Find team to seek services for his emotional and adjustment problems and verbal and cognitive deficits. He states that ██████████ has severe problems with depression and that she is concerned about living in Mexico due to its medical services, educational system, and pollution; and

about having to live in poverty and confronting prejudice. states that appears to be somewhat delayed in the areas of speech and language as well as cognitive abilities. However, he states that age makes it difficult for him to accurately gauge his development.

has diagnosed with depression. Although the input of a mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between and . The record fails to reflect an ongoing relationship between a mental health professional and . Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The record reflects that is concerned about her and her son's separation from . 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 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 she remains in the United States without her 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*. The AAO notes that has the emotional support of her parents and siblings in the United States.

conveys that her husband is employed at a gas station in Mexico. Although counsel claims that would have difficulty obtaining employment in Mexico, no documentation has been presented in support of that claim. 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*.

No documentation is in the record to substantiate concerns about prejudicial treatment or medical services in Mexico. Although Mexico has problems with pollution, the record does not

demonstrate that [REDACTED] and her son will develop medical problems if they lived in Mexico or that such conditions would be untreatable. Although counsel indicates that [REDACTED] is a special needs child and his educational needs in Mexico would financially burden his family, there is no documentation in the record of his special educational needs. It is noted that [REDACTED] indicates that his evaluation of [REDACTED] is not an accurate gauge of [REDACTED] cognitive and language development. 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.*

While the AAO acknowledges that [REDACTED] and her son will be separated from family members in the United States, it finds that they will not be alone in Mexico as [REDACTED] and his family members are there.

When all of the factors raised in this case are considered both individually and collectively, the AAO finds they 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 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.