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U.S. Citizenship
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FILE:

CDJ 2004 740 893

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)

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 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 August 24, 2006. The applicant filed a timely appeal.

On appeal, counsel states that all of [REDACTED]'s family ties are in the United States, his father is a naturalized citizen of the United States, his mother is a lawful permanent resident, and his brother resides in Illinois. Counsel states that [REDACTED] has no special skills and works at a carpet cleaning service. According to counsel, 40 percent of the population in Mexico lives below the poverty level and [REDACTED] chance of finding employment there is extremely poor in view of his age, lack of education and skills, and unfamiliarity with Mexico's job market and society. She states that [REDACTED] has no identifiable skills other than working in a hair salon. Counsel states that [REDACTED] has a close relationship with his parents, who have medical conditions. She states that [REDACTED] is his father's primary caregiver and that his father had cataract surgery and his mother is being treated for depression and was hospitalized for kidney stones. Counsel states that [REDACTED] and his wife want to have children, but his wife has been unable to conceive due to uterine fibroids. She states that [REDACTED] is concerned about his wife having access to proper medical care in Mexico and does not know whether they will be able to have children in light of their age. Counsel states that if [REDACTED] remains in the United States he will have to support himself and his wife in Mexico and take care of his parents. If he joins his wife in Mexico he will leave his job, home, and family and his hopes and dreams. Counsel states that in *In Re Gonzalez*, 23 I&N Dec. 467 (BIA 2002), the Board of Immigration Appeals (BIA) found that strong ties to the United States is a significant basis for finding exceptional and extremely unusual hardship.

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 January 2001, 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)(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 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-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 [REDACTED] affidavit, information about fibroids, wage statements, prescriptions and information about Mirtazapine, medical bills, articles about discrimination in Mexico, photographs, invoices, a letter by Christian Foundation for Children and Aging, remittance to the applicant, and other documentation.

The AAO notes that the letter dated November 9, 2005 by [REDACTED] does not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] 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.

In that the November 9 letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

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 notarized on September 22, 2006, that his wife has been trying to achieve pregnancy since 2003, but has been unsuccessful due to fibroids, which may have to be surgically removed. He states that his wife lives with her sister in a small town in Mexico where there is no clinic, doctor, or grocery store. The submitted medical records reflect that [REDACTED] may have fertility problems. WellGroup Health Partners conveys that [REDACTED] had some work-up for infertility and will be considered for further management and treatment; and that she has a small fibroid and dysmenorrheal.

The AAO finds that if surgical removal of the fibroids is required, no evidence has been provided to show that [REDACTED] would be unable to have the surgery performed 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED] conveys that he is concerned about being able to afford medical care for his wife. He indicates that he does not have health insurance and it is difficult for him to manage bills and send money to his wife. Wage statements show [REDACTED] earns \$8.25 per hour; his year to date total for the period ending August 31, 2006 was \$10,807. As shown in the submitted invoices, [REDACTED] monthly expenses are approximately \$1,191. [REDACTED] and his father own the house where they live. No information was provided regarding his father's contributions to the household expenses. Based on the submitted documentation, it has not been established that [REDACTED] income is insufficient to pay for his living expenses and to provide financial support to his wife. The AAO notes that no documentation has been presented to show that [REDACTED] wife, who lives with her sister, would be unable to support herself in Mexico.

[REDACTED] 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 [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*.

With regard to joining his wife to live in Mexico, [REDACTED] indicates that he would not be able to take care of his parents. The record shows that [REDACTED] mother is being treated for depression and his father had cataract surgery. This documentation is not sufficient to demonstrate that [REDACTED] parents are unable to take care of themselves if [REDACTED] joined his wife to live 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*.

With regard to employment in Mexico, the applicant submitted two articles by [REDACTED]. However, [REDACTED] fails to cite to authorities in support of his claim of age discrimination in Mexico, therefore these articles can be given little weight. In addition, there is no other documentation in the record that establishes the [REDACTED] would be unable to obtain 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.*

When the hardship factors presented 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 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.