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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 800 162

Date OCT 21 2009

IN RE: Applicant: [Redacted]

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's spouse, [REDACTED] is 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 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 15, 2006. The applicant filed a timely appeal.

On appeal, counsel states that except for the applicant, [REDACTED] has no family members in Mexico. Counsel indicates that [REDACTED] sisters, brother, and parents are U.S. citizens and are located in the greater Chicago, Illinois, area. Counsel states that [REDACTED] parents are dependent on [REDACTED]. He states that her mother has diabetes and severe chest pains, and her father has heart complications. Counsel states that [REDACTED] son has been in drug rehabilitation and lives with [REDACTED] and depends on her emotionally and financially. Counsel states that Ms. [REDACTED] is a customer service representative earning \$28,000 annually, with monthly net income of \$1,200; he states that her income is not enough for monthly household expenses of \$2,500. Counsel states that the applicant earned \$15 per hour as a cook while in the United States. According to counsel, [REDACTED] mortgage and vehicle payments are in arrears and that it will be difficult for [REDACTED] to transport herself to work and help her parents if she loses her vehicle. He states that she has \$20,000 in personal loans and has emotional and physical problems as a result of her financial problems. Counsel conveys that [REDACTED] health has declined since the applicant's departure to Mexico and her physician diagnosed her with severe depression and insomnia. He states that her work performance has suffered and she is on final warning status due to repeated absences for medical reasons related to the applicant's departure. Counsel states that relocation to Mexico without suitable healthcare is not a feasible option for [REDACTED]. He states that Ms. [REDACTED] has lived in the United States for nearly 40 years and is a native of France and has an Italian background. Counsel conveys that [REDACTED] speaks only a little Spanish and relocating to Mexico would be a culture shock for her, especially since she would be separated from her children and entire family. Counsel states that there is no other legal recourse for the applicant to adjust status or enter the United States for the next 10 years. Counsel submits into the record a Complaint to Foreclose Mortgage filed January 18, 2007 and Notices of Reinstatement and Redemption relating to a vehicle, which are dated January 23, 2007.

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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1991 and remained until March 2006. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions of the Act until March 2006, and triggered the ten-year-bar when he left the country, 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). 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 his U.S. citizen step-children 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 letters, medical records, invoices, mortgage documents, wage statements, 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 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.

With regard to remaining in the United States without her husband, [REDACTED] conveys that she has been depressed for a long time and has been under a doctor’s care before she married the applicant. She states that since her husband has been gone she has become more depressed and cannot function well. Letter by [REDACTED] dated December 27, 2006. She states that her anxiety level is so high that she has a breathing problem and takes Alprezolan and takes Propo-n/apap for pain and Rozerem to sleep. The letter by [REDACTED] conveys that [REDACTED] suffers from depression and insomnia and was prescribed medications for those conditions. [REDACTED] states that [REDACTED] indicates that she is not taking her medications due to their high cost. Medical records show [REDACTED] has a history of chronic depression and that she attempted suicide 15 years ago. Her medical records show her as having physical complaints related to her depression. [REDACTED] went to a hospital emergency department for chest pain in February 5, 2006. [REDACTED] states that her job as a customer service representative is affected by her worrying about her husband

and that she was almost terminated due to her attendance. The letter by [REDACTED] employer states that [REDACTED] employment is in jeopardy due to excessive absences and late arrivals and that [REDACTED] was placed on Final Written Warning on September 13, 2006. [REDACTED] indicates that she is six months behind on her mortgage and truck payments and foresees foreclosure of her house and repossession of her truck. She indicates that she has personal loans of \$20,000. The record shows that a complaint was filed to foreclose on [REDACTED]'s mortgage and her vehicle was repossessed. [REDACTED] states that she has three children and they need her. She conveys that her son has a drug problem and she helps him go to rehabilitation. If she loses the house, she states that no one will take them in. She states that her daughters have been disowned by their biological father and the applicant is the closest father they have known. Letters by [REDACTED] daughters convey they have a close relationship with the applicant, and their mother has been depressed and has had anxiety attacks since the applicant left the country. [REDACTED] daughter, states that she grew up without her biological father. She states that depression sometimes makes her mother's body numb. Counsel conveys that [REDACTED] children were born in 1980, 1982, and 1985. [REDACTED] states that her parents have heart conditions and her mother is diabetic and forgets things. She states that she is the driver and translator for her parents and moved near them when they moved from Florida. The letter by [REDACTED] states that [REDACTED] parents are his patients and [REDACTED] assists them with some of their day-to-day activities, including doctor appointments, medications, and translating. Letter by [REDACTED] dated December 28, 2006.

In consideration of the hardship factors of the pending foreclosure of [REDACTED] house and repossession of her vehicle, and her chronic depression, which [REDACTED] indicates has worsened due to separation from the applicant, the AAO finds that the record demonstrates that [REDACTED] will experience extreme hardship as a result of separation from her husband.

[REDACTED] conveys that she has been supporting her husband in Mexico and that within a ten-month period he has had approximately four jobs, which have lasted about one month each. She states that it is difficult to find any work in Mexico and that if she lived there she would live in poverty and would be unable to find work because she does not know Spanish. Letter by [REDACTED] dated December 27, 2006. Other than [REDACTED] assertions, no documentation has been submitted to show that [REDACTED]'s husband would be unable to financially support her 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] states that she has a close relationship with her children and is supportive of her son who has a drug problem. No documentation is in the record showing that [REDACTED] son is in drug rehabilitation and requires her support. 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 the record shows that [REDACTED] provides some assistance to her parents, [REDACTED] has not explained why her siblings would be unable to assist their parents in her absence.

The applicant has established extreme hardship to his wife if she were to remain in the United States without him; however, he has not established that she would experience extreme hardship if she were to join her husband to live in Mexico.

Based upon the record, the applicant in this case has not established extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

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), 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 dismissed.