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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  
and Immigration  
Services

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FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

CDJ 2004 778 136

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:

[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's spouse, \_\_\_\_\_, is 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 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, \_\_\_\_\_ accredited representative states that \_\_\_\_\_ has established extreme hardship to his spouse and children. She states that \_\_\_\_\_ depends on her husband emotionally and financially, and that prior to the applicant's leaving the United States, \_\_\_\_\_ took care of the children while her husband was employed. She states that \_\_\_\_\_ uprooted her family and traveled to Mexico, a country where she has never lived, to visit her husband, which resulted in her losing her job, exposing her children to danger, and living in impoverished conditions. The accredited representative states that if \_\_\_\_\_ remains in the United States without her husband, she will have to obtain a job and spend more time at work than with her children and may lose her job in order to take care of her children. She states that \_\_\_\_\_ will have to pay childcare, placing her children in danger by having a stranger take care of them. She indicates that \_\_\_\_\_ was to adopt \_\_\_\_\_ oldest daughter.

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 January 1998 and remained until November 2005. The applicant accrued unlawful presence from January 1998 until November 2005, 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 child and step-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-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, birth certificates, a marriage certificate, photographs, 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] states in an undated letter entitled “Extreme Suffering,” that she is now living with her parents in Palacios after having lived in Pharr, Texas, in order to be close to her husband. She indicates that while in Pharr she worked for about nine months in low-paying jobs, and lived with her husband’s aunt. She states that she decided to leave Pharr because she could not obtain employment and felt she and her children stayed with her husband’s aunt long enough. She states that she was pressured by bills and felt she let her husband down as he relied on her income. [REDACTED] conveys that she and her children visited her husband in Mexico and stayed in a house that had neither running water nor a bathroom. She states that the streets in Mexico are dangerous and the local news reports criminal activity and she felt that traveling back and forth visiting her husband made her and her children a target. She states that prior to the applicant’s leaving the United States, she had been a stay-at-home mother while her husband was employed as a welder. She states that with working she cannot spend the same time with her children such as taking them places, being involved in their school, and preparing meals. [REDACTED] conveys that she has a close relationship with the applicant. The letter by [REDACTED]’s parents states that they convinced their daughter to move back home so that she and her children would have family support. They state that they help her daughter to the extent that they can as they have their own family to support. The AAO notes that [REDACTED]’s children are now six and eight years old.

[REDACTED] states that she has had financial difficulties since her husband left the United States. However, there is no documentation in the record of [REDACTED]’s monthly income, and the cell phone and cable invoices are not sufficient to show that she would experience extreme financial

hardship if she remained in the United States without her husband. 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)).

██████████ is concerned about separation from her husband. 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 husband, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by ██████████ as a consequence of separation from her husband is unusual or beyond that which is normally to be expected from an applicant's bar to admission. See *Hassan* and *Perez*, *supra*.

Having carefully considered the hardship factors raised collectively, the AAO finds that in this case those factors are not sufficient to establish extreme hardship to ██████████ if she were to remain in the United States without her husband.

With regard to joining her husband to live in Mexico, ██████████ describes her husband's living conditions in an impoverished area of Mexico. The AAO finds that he has not demonstrated that he would be unable to find gainful employment in another part of Mexico where the conditions would be better for his family. 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)).

The applicant has failed to establish extreme hardship to his spouse if she were to remain in the United States without him, and alternatively, if she were to join him to live in Mexico.

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 denied.