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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

H<sub>2</sub>

FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 29 2009

IN RE:

Applicant:

[REDACTED]

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:

[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, and is 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 a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act 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 March 7, 2007. The applicant filed a timely appeal.

On appeal, the applicant indicates that her family is experiencing a difficult time, her U.S. citizen daughter has health problems and her spouse withdrew from college. The applicant submits additional documentation to prove extreme hardship.

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 1992 and remained until January 3, 2006. The applicant accrued eight years of unlawful presence from April 1, 1997 until January 3, 2006, and triggered the ten-year-bar when she left the country, 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 and to his or her child are 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 her U.S. citizen or lawful permanent resident 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 U.S. citizen spouse. The AAO notes that the record reflects that the applicant’s daughter is a citizen of the United States; however, there is no documentation in the record showing whether her son is a U.S. citizen or lawful permanent resident of the United States.

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).

The evidence in the record consists of birth certificates, a marriage certificate, letters, an affidavit, a mental health evaluation, medical records, invoices for medical care, school records, and other documentation.

It is noted that the record contains a letter by [REDACTED] and invoices and prescriptions that concern [REDACTED] daughter; and a letter by [REDACTED] that relates to the applicant. None of these documents are accompanied by an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to the Service [now U.S. Citizenship and Immigration Services, “USCIS”] 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.

As the above-described letters, invoices, and prescriptions are without an English translation, they will carry no weight in this decision. *See*, 8 C.F.R. § 103.2(b)(3).

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 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 the hardship experienced as a result of separation from the applicant, the mental health evaluation by [REDACTED] dated March 21, 2007, states the following. [REDACTED] grew up mostly with his mother; his father was in and out of jail throughout [REDACTED] childhood. [REDACTED] attended school until the 10<sup>th</sup> grade, obtaining his GED three months later. [REDACTED] became involved with individuals who brought him into a world that included legal problems. He started to drink and experiment with drugs. [REDACTED] life changed due to his wife and child. He worked full time and attended college. The first three to four months during their separation he did well, receiving A’s and B’s. During the fourth month of separation from his family, [REDACTED] daughter was hospitalized, and two more hospitalizations followed. Some of the hospitalizations were for respiratory problems; others were for stomach viruses accompanied by fevers. [REDACTED] was devastated. He could not focus and his grades slipped to where he was failing and he dropped

out. The financial drain of supporting his wife and daughter in Mexico adversely affected [REDACTED] studies; he was unable to purchase books for his college courses. His studies were also affected due to his wife's and daughter's health problems. His wife sought help for depression and now takes anti-depressants; her depression is situational and will subside once she is reunited with her husband. [REDACTED] is a clerk at Elder Care Home Health and Hospice. [REDACTED] diagnosed [REDACTED] with Major Depression and Anxiety, which [REDACTED] states are directly related to family separation.

[REDACTED] conveys in his affidavit that separation from his wife is causing extreme hardship to him and his two-year-old daughter. He states that his wife and daughter have been in Mexico since January 2006, while he and his stepson live in Texas. The record shows that [REDACTED] married his wife in April 2002 and their daughter was born in September 2004. He states that he stopped attending Texas State Technical College-Harlingen while in his first year in order to work full time to support two households: his wife's in Mexico and his in Texas. The academic evaluation shows [REDACTED] failed three courses in the summer of 2003, failed two courses in the spring of 2005, and failed three courses in the fall of 2006; and did well in the spring and summer of 2006. He took two courses in the spring of 2007. [REDACTED] had a poor academic record in 2003 and 2005, which period of time was prior to his wife leaving to Mexico. The record also suggests that [REDACTED] had always been employed full time while attending college.

[REDACTED] states that his daughter has been hospitalized three times for gastrointestinal complications and her health problems have added more expense to an already weak budget. He indicates that he is financially burdened supporting two households, and as a result, could not purchase books for his college courses and subsequently dropped out of college. Except for a letter indicating that [REDACTED] pays \$350 for rent, there is no documentation in the record of [REDACTED] other financial obligations or of his income; and no documentation has been provided to show that the applicant is unable to support herself and her child in Mexico. In the absence of such documentation the applicant fails to demonstrate that her husband's income is not sufficient to cover his financial obligations. 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 and his step-son sought psychiatric help for depression caused by family separation. The record contains a letter by [REDACTED] dated January 24, 2007, in which [REDACTED] conveys that the family was concerned because [REDACTED] started cutting on his arm. He states that [REDACTED] has trouble sleeping and concentrating at school. [REDACTED] attributes [REDACTED] symptoms to include his father not being available to provide parental guidance and support, and separation from his mother. [REDACTED] tentatively diagnosed [REDACTED] with Adjustment Disorder, With Depressed Mood.

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).

As previously stated, the record does not contain documentation showing that step-son is either a citizen or lawful permanent resident of the United States. 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 the applicant’s husband, if he remains in the United States without his wife, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by the applicant’s husband as a result of separation from his wife is unusual or beyond that which is normally to be expected from an applicant’s bar to admission. *See Hassan and Perez, supra*.

When the hardship factors are considered collectively, the AAO finds that they fail to establish extreme hardship to [REDACTED] if he were to remain in the United States without his wife.

The applicant does not claim extreme hardship to her husband if he were to join her to live in Mexico.

The applicant has failed to establish extreme hardship to her spouse if the waiver application were denied. 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), 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.