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U.S. Citizenship  
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ) Date: SEP 02 2009

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).

John F. Grissom,  
Acting 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 a naturalized citizen of the United States. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to join his spouse in the United States. The district officer 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 June 5, 2006. The applicant submitted a timely appeal.

On appeal, counsel states that when the relevant hardship factors are considered in the aggregate, extreme hardship to the applicant's spouse is apparent. Counsel states that the applicant's spouse, Ms. [REDACTED] is a single-parent, and is experiencing financial hardship. Counsel states that Ms. [REDACTED] cannot afford day care so [REDACTED] mother came to Dallas, Texas, leaving her husband, in order to care for her grandchild. Counsel states that [REDACTED] cannot plan to have another child or save for retirement without her husband, and was hospitalized for gastritis due to Mr. [REDACTED] absence.

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.

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>1</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* Memo, note 1.

U.S. Citizenship and Immigration Services (USCIS) records reflect that [REDACTED] entered the United States without inspection in February 1990 and remained in the country until February 2005. He therefore accrued more than one year of unlawful presence and triggered the ten-year-bar when he left the United States, 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 and to his or her child is not a consideration under section 212(a)(9)(B)(v) of the Act. 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. Hardship to 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. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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

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<sup>1</sup> Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act; AFM Update AD 08-03; May 6, 2009.

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).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's wife must be established in the event that she joins the applicant to live in Mexico, and alternatively, if she remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel on appeal portrays the hardship in this case as both financial and emotional in nature if Ms. [REDACTED] were to remain in the country without her husband. Although counsel states that Ms. [REDACTED] is having financial difficulties on account of separation from her husband, the AAO notes that there is no documentation in the record of [REDACTED] monthly income or financial obligations. Without such documentation the AAO cannot determine whether [REDACTED] income is insufficient to meet her household expenses. 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 support of counsel's assertion of emotional hardship are letters, an affidavit, and emergency room discharge instructions. The letter by [REDACTED] employer dated July 26, 2006, indicates that Ms. [REDACTED] is having emotional, financial, and physical difficulties on account of separation from her husband. He states that her personality has declined and she "seems to be sad and on the verge of tears a great deal of the time." He states that [REDACTED] sent her daughter to live with her mother in Laredo, Texas, which is seven hours away, because [REDACTED] cannot afford childcare on one income. He states that [REDACTED] looks "tired and run down." The July 21, 2006 letter by the parochial vicar of [REDACTED] church states that [REDACTED] and her child are "experiencing much sorrow" due to separation from [REDACTED] and that "separation has also caused much financial difficulties" for [REDACTED]. In her affidavit dated January 4, 2006, [REDACTED] states that she has a close relationship with her husband and that her daughter needs [REDACTED]. Ms. [REDACTED] conveys that she is "worried about my financial situation" and has had to have her family help her pay rent, water, electricity, telephone, and other expenses and may have to receive assistance from the government. She indicates that she cannot attend school to finish her career on computers

without the applicant and wants her daughter to attend school in the United States. [REDACTED] states that her mother takes care of her child because she cannot afford a babysitter and that it is hard for her to watch her mother who is sad because she had to leave her husband in Laredo, Texas, to help her. She states that she is worried about her husband's weight loss and has had to provide him with money because it is hard to find a job with comparable pay to those in the United States. [REDACTED] states that after her husband left the country she felt alone, depressed, and nervous, which caused pain in her stomach. She states that she was diagnosed with gastritis, which is caused by emotional stress. Letters by [REDACTED] that are contained in the record are similar in content to her affidavit. The Baylor University Medical Center Emergency Department discharge instructions dated June 11, 2005, states that [REDACTED] was diagnosed with "acute gastritis: vomiting." Causes are said to include excess use of alcohol, aspirin, non-steroidal anti-inflammatory drugs, and emotional stress.

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. *See, e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (separation of the applicant 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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (finding separation of respondent from his lawful permanent resident wife and two U.S. citizen children is not extreme hardship); and *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985) (deportation is not without personal distress and emotional hurt).

Furthermore, the birth of an illegal alien's child who is a U.S. citizen is not sufficient in itself to prove extreme hardship. *See, Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985) (an illegal alien cannot gain a favored status merely by the birth of a citizen child); *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977) ("an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child"); and *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984) (birth of a U.S. citizen child is not per se extreme hardship).

[REDACTED] is very concerned about separation from her husband and his separation from their child. The AAO notes that [REDACTED] was initially diagnosed with acute gastritis on June 11, 2005, which may have been caused by emotional distress. However, the record does not contain any subsequent medical records in connection with [REDACTED] medical condition, even though the appeal of the waiver application was filed one year later in July 2006.

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that [REDACTED] situation, if she remains in the United States without her husband, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by [REDACTED] is a heavy burden, but it is not unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra*.

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they fail to demonstrate that the applicant's spouse would experience extreme hardship if she were to remain in the United States without her husband.

In regard to the hardship the applicant's wife will experience if she joined her husband to live in Mexico, [REDACTED] states that it is hard to find jobs with comparable pay to those in the United States, and that she wants her child to attend school in the United States. Courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by his wife, as a result of her concern about the welfare of her child, is a relevant consideration. With the case here, the applicant's wife is concerned about the education of her child in Mexico; however, neither the applicant nor his wife states the difficulties their daughter would experience if she were to attend school in Mexico and how this would result in extreme hardship to [REDACTED]

In considering the hardship factors raised here both individually and cumulatively, they fail to demonstrate extreme hardship to [REDACTED] if she were to join her husband to live in Mexico.

It is thereby concluded that a waiver of inadmissibility for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), is not warranted.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 proving eligibility 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.