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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 22 2010**

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 pursuant to 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), 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 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 February 27, 2007. The applicant filed a timely appeal.

On appeal, the applicant's representative states that [REDACTED] is receiving treatment for Type II Diabetes Mellitus, from which she has been ill since October 27, 2005, and has the added complication of diabetic peripheral neuropathy. She states that [REDACTED] will experience extreme and unusual hardship without her husband as he is her primary caregiver, helping her with basic tasks, assisting in her medical care, and taking her to doctor and clinic visits. She states that [REDACTED] basic motor skills have been impacted and that [REDACTED] has depression. The representative conveys that [REDACTED] was deemed 100 percent disabled by the Social Security Administration. She states that the applicant supports his family and that without him they would probably become dependent on public assistance and welfare. The representative states that should the family relocate to Mexico "the suffering would be no less extreme, if for a combination of slightly different reasons." The representative states that in determining hardship the director failed to consider all of the relevant factors cumulatively and give proper weight to those factors that were considered. She states that [REDACTED] was not afforded due process as a result of the erroneous and arbitrary review of his application.

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 1998. He entered the United States without inspection in October 2002, remaining until December 2003. He accrued one year of unlawful presence from October 2002 to December 2003, and when he left the country he triggered the ten-year bar, 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 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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The factors 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.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in

determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine 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 record contains letters by Social Security Administration, a letter by Eastside Urgent Care Center, letters by [REDACTED], a marriage certificate, and other documentation.

In rendering this decision, the AAO will consider all of the evidence in the record.

In an undated letter [REDACTED] indicates that she is diabetic and lives alone, and that her husband supports her morally and economically and helps her cope with her illness. She states:

I am paying renting now and I am getting into a big depression because I can't drive anymore and I have to go to Juarez, every single day. My house is a mess now because I can't take care of it alone. When I crossed [sic] to Juarez I spend from one to two hours with my husband[.] I take him to his job and then I come back home.

She states that the pesos her husband gives her are not sufficient to pay rent in the United States. She conveys that her husband is in charge of the car's maintenance and that daily driving will damage the car. She states that all of her children and grandchildren are in El Paso, Texas.

In an undated letter notarized on July 11, 2005, [REDACTED] states that she needs her husband to be with her as she “cannot be going back and forth every day to be with my husband.” She states that she needs him to start working in order to help her with expenses.

[REDACTED] conveys in his letter dated March 20, 2007 that he has been treating [REDACTED] for Type II Diabetes Mellitus since October 27, 2005, and that although her diabetes is controlled, she has the complication of diabetic peripheral neuropathy. He states that if [REDACTED] fails to control her diabetes she will suffer from further complications of the disease, which will shorten her life span.

In its March 19, 2007 letter, the Social Security Administration (SSA) states that [REDACTED] is 100 percent disabled with a disability onset date of December 31, 2002; and that she receives \$748 in monthly social security benefits, with \$93.50 deducted every month.

Extreme hardship to [REDACTED] 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 the hardship of [REDACTED] if she were to remain in the United States without the applicant, [REDACTED] states that she requires financial assistance from her husband. She has provided documentation from the SSA showing her monthly income; however, she has provided no documentation of her monthly financial obligations. In the absence of documentation of her monthly expenses, the AAO cannot determine whether [REDACTED]'s income is insufficient to meet

those 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)).

Furthermore, the AAO notes that [REDACTED] has managed to support herself since December 2003, and the record reveals that her adult children live in El Paso, Texas. [REDACTED] has not stated why her adult children are unable to financially assist her.

The applicant has a close relationship with 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. After careful consideration of the evidence in the record, the AAO finds that the situation of [REDACTED] 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 conveys that the emotional hardship to be endured by [REDACTED] is not unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra*.

Although the representative indicates that [REDACTED] would experience suffering if she were to relocate to Mexico, she provides no specificity concerning this suffering.

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they fail to demonstrate that [REDACTED] would experience extreme hardship if she were to remain in the United States without the applicant, and if she were to join him to live in Mexico.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under sections 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 sections 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.