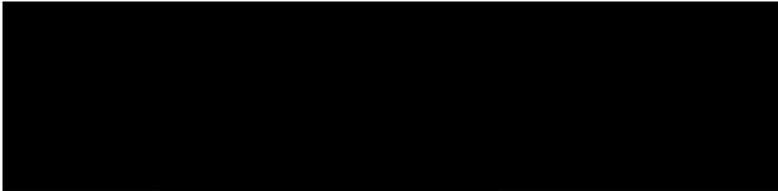


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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CIUDAD JUAREZ

Date:

JUN 05 2007

(CDJ 2004 628 168 relates)

IN RE:



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:



RECEIVED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in Charge (OIC), Ciudad Juarez, Mexico denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. 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. [REDACTED], a U.S. citizen, is the wife of the applicant. The applicant 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). The OIC found the applicant failed to establish eligibility for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and denied the application. Counsel submits a timely appeal.

The AAO will first address the finding that the applicant is inadmissible for having been unlawfully present in the United States for more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
  - (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 is present in the United States after the expiration of the period of stay authorized by the Attorney General 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). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II).<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</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, then 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 DOS Cable, note 1. See also *Matter of Rodarte*, 23 I&N Dec. 905 (BIA

<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, *Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043)*; and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> See DOS Cable, note 1; and *IIRIRA Wire #26, HQIRT 50/5.12*.

2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The OIC correctly found that the applicant was unlawfully present in the United States for more than one year. The applicant entered the United States without inspection in November 1999. He accrued unlawful presence from November 1999 until April 2005, when his voluntary departure from the United States in April 2005 triggered the ten-year bar. Thus, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. *Decision of the OIC*, dated September 26, 2005.

The AAO will now address the finding that the applicant failed to establish eligibility for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

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 applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v). A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 the applicant is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant’s spouse is the only qualifying relative here. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 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, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that it considers relevant in determining whether an applicant has established extreme hardship 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 564. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation from one’s spouse will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the applicant’s wife. It is noted that extreme hardship to her must be established in the event that she joins the applicant to live in Mexico; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains a letter, dated October 12, 2005, from [REDACTED]. In the letter, she makes the following statements. Her husband has been living in Mexico since April 7, 2005. The last six months have been the hardest she has ever endured because her husband has not been with her. The separation has caused tremendous stress and anxiety attacks and loneliness and fear. She takes medication for depression and is under the care of a physician. She has no desire to socialize. Her health and state of mind affect her daily life. She and her husband dream of starting a family, but she does not want to raise a child alone. Her work is affected by the absence of her husband. She has traveled to see her husband and lost hours of work, which she compensated for through vacation and sick leave. Because she is in a financial bind, she has asked family to loan her money to pay rent, car, and personal expenses. She relies on sleeping pills to sleep at night. She fears for her safety when traveling to see her husband. She worries about driving when depressed and being stranded at night on the highway. She loves her husband and needs him for mental and spiritual support. She cannot continue her education, which she is classes away from receiving a degree in human services, because she cannot concentrate and is on medication. She does not wish to be medicated to stabilize her moods, thoughts, and feelings; it is sad and shameful to be characterized as someone who has a mental illness. Her illness is a direct result of the applicant’s absence in her daily life.

The handwritten letter, dated April 8, 2005, from [REDACTED] states that she may have to work 2-3 part-time jobs to manage financially, causing stress. She needs her husband’s support in order for her to undergo a gastric bypass.

In the letter (dated August 24, 2005) from the applicant, he states the following. His wife is alone and has no support from family to help her. He had open heart surgery to close a heart murmur that he had ever since he was a child, and his wife stresses the issue that he needs to see his doctor every six months in order to maintain a healthy life style. His wife lived her entire life in the United States and will miss her opportunity to have a higher education if she moved out of state. His wife could not advance in Mexico, where living conditions are horrible and income is low. He and his wife have no family in Tijuana, Mexico. His goal is to become an engineer; his short-term goal is to become a general contractor. There is no school or classes in Tijuana. He fears for his safety and for wife's safety because she is alone at night and drives to see him. Separation is taking a toll on her health. He worries about her job and how long she can take off work and whether she will get evicted because she is behind on rent.

The letter in the record (dated October 10, 2005) from [REDACTED] z, a registered nurse, states that her friend, [REDACTED] is in a state of major depression. She indicates that "[h]er mother has told me that she hears [REDACTED] crying in her room all the time, and during the night when she should be sleeping, she is awake crying."

The undated letter in the record from [REDACTED] states the following. She is the director of Nursing of Crestwood Behavioral Health Center in Bakersfield, California and [REDACTED] supervisor. During the past year she has had to accommodate [REDACTED]'s depression, short temperedness, and crying by sending her home. [REDACTED] has taken time off to see her husband in Mexico and compensated for the time taken off by using her vacation and sick leave. [REDACTED] and her husband are a loving couple.

The record contains a medical record from Kaiser Permanente, signed October 2, 2005. It indicates that [REDACTED] has been established with [REDACTED] Internal Medicine, since May 2005, and has "stress, secondary to family situation, anxiety." She was prescribed Wellbutrin and takes Trazodone. The record also contains a letter, dated October 5, 2005, from [REDACTED], in which he states that he saw [REDACTED] on September 28, 2005 for stress during the past two to three months.

The record indicates that the applicant and his wife married on October 27, 2001 in the United States. It contains copies of labels for medication; a document (dated September 26, 2005) from Kaiser Permanente that recommends that [REDACTED] should be off work for 5 days and a document entitled "Same Day Clinic Progress Record" from Kaiser Permanente.

[REDACTED] indicates that she will need her husband's support in order to undergo a gastric bypass. However, there is no evidence in the record establishing that she will undergo this operation and that it is a serious operation which requires her husband to provide care for her after it is performed. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

If Ms. De Luna does not join her husband in Mexico, it is clear from the record that she will endure emotional hardship as a result of such a separation. The AAO is not unmindful or unsympathetic to the emotional turmoil caused by separation from a loved one. It notes that [REDACTED] has had to take medication for stress and anxiety. However, it finds that [REDACTED]'s situation, if she decides to live in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of

extreme hardship as required by 212(a)(9)(B)(v). In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) the Ninth Circuit upheld the BIA's 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 (9<sup>th</sup> Cir.1980) (severance of ties does not constitute extreme hardship). In addition, the Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The record before the AAO is insufficient to establish that the emotional hardship endured by [REDACTED] is unusual or beyond that which is normally to be expected upon deportation.

Although [REDACTED] asserts that she will endure economic hardship if her husband's waiver is not granted and she lives in the United States, no evidence has been submitted to support her assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. It is noted that the letter from [REDACTED] suggests that [REDACTED] lives with her mother. Furthermore, in *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981), the U.S. Supreme Court found that economic detriment alone is insufficient to establish extreme hardship. It is only when other factors such as advanced age, illness, family ties, etc. combine with economic detriment that deportation becomes an extreme hardship. *Matter of Anderson*, 16 I&N Dec. 596, 598 (BIA 1978).

The record is insufficient to establish that [REDACTED] will experience extreme hardship if she lives with her husband in Mexico. The social, economic, and political conditions in Mexico, the country where [REDACTED] will live if she joins her husband, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9<sup>th</sup> Cir. 1986).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7<sup>th</sup> Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8<sup>th</sup> Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

[REDACTED] asserts that his wife will miss her opportunity to have a higher education if she moved to Mexico and that she would not advance in a country where living conditions are horrible and income is low. The record

reflects that the applicant is 28 years old and his wife is 26 years of age. *Form I-130*. There is no evidence in the record establishing a complete inability for the [REDACTED]'s to find work in Mexico. [REDACTED] indicates that he had open heart surgery to close a heart murmur and that twice a year has a check-up with his doctor. There is no evidence in the record conveying that [REDACTED] or her husband has a severe illness that would make living in Mexico extremely hard.

Having fully weighed the factors mentioned above, both individually and in the aggregate, it is concluded that the factors do not, in this case, constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met that burden.

**ORDER:** The appeal is denied.