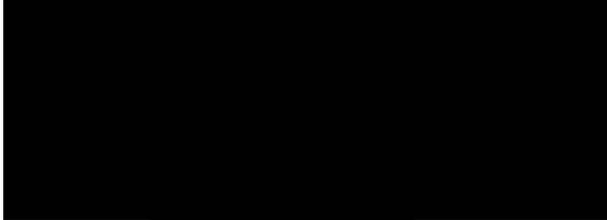




U.S. Citizenship
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Office: CIUDAD JUAREZ, MEXICO

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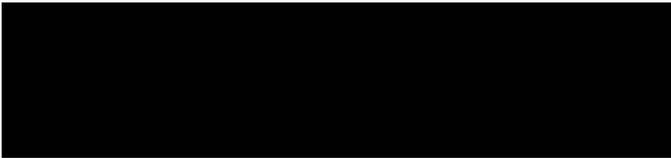
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 8 U.S.C. § 1182(i).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, 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 application will be denied.

The applicant, ██████████, a native and citizen of Mexico, 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; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. Ms. ██████ 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), which the Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated December 30, 2005.*

The AAO will first address the findings of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, 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). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

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 departure from the United States following accrual 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), do not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The decision of the immigration judge dated October 28, 1991, and the Warrant of Removal/Deportation, dated February 4, 2003, indicate that ██████ entered the United States at Rio Grand City, Texas, on January 26, 1991, and was ordered deported *in absentia* from the United States to Mexico on October 28, 1991. Ms. ██████ voluntarily departed from the United States to Mexico in August 2003. Based on the record, the AAO finds that ██████ accrued six years of unlawful presence from April 1, 1997, until her departure

¹ 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).

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

In August 2003, and when she departed from the country she triggered the ten-year bar. Consequently, the Officer-in-Charge's finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now consider the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that an immigration judge ordered [REDACTED] deported *in absentia* from the United States on October 28, 1991 and that [REDACTED] failed to disclose that she had been in the United States prior to 1992 during her consulate interview in 2005.

On appeal, counsel asserts that the applicant did not willfully misrepresent a material fact, stating that at the consulate interview on April 21, 2005, [REDACTED] withheld she was in the United States prior to 1992 and was ordered deported *in absentia* because [REDACTED] was not aware of the immigration judge's order. Counsel states that on February 4, 2003, during the adjustment of status interview, [REDACTED] learned she was under a deportation warrant. She states that [REDACTED] believed that she voluntarily departed from the United States in August 2003 when she left for visa processing.

The AAO finds that the record clearly establishes that [REDACTED] was aware of the outstanding deportation order at the time of the consulate interview on April 21, 2005. The record contains an immigration judge's order dated August 25, 2003, addressing a pending motion to reopen to rescind the deportation order entered *in absentia* in 1991 against the applicant. The motion to reopen was filed on the applicant's behalf by her attorney. The AAO notes that in the Petition for Alien Relative filed on October 19, 2001 and the immigrant visa application the applicant indicated she arrived in the United States in 1991.

To find [REDACTED] inadmissible under section 212(a)(6)(C)(i) of the Act, her failure to disclose the deportation order must be a material misrepresentation and by the misrepresentation she must have sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961), discusses inadmissibility based on misrepresentation. In *Matter of S- and B-C-*, the Attorney General indicates that a misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

The Attorney General states that “[w]hile a misrepresentation as to identity will generally have the effect of shutting off an investigation, so also will misrepresentations as to place of residence, prior exclusion or deportation from the United States, criminal record, Communist Party membership, etc.” *Id.* at 448.

§ departure from the United States after the order of deportation rendered her inadmissible under section 212(a)(9)(A)(ii) of the Act.³ A person “self-deports” if he or she leaves the United States after an order of deportation has been entered.⁴

concealment of the deportation order entered in 1991 is material because it has the effect of shutting off an investigation. *See, Matter of S- and B-C-, at 448, supra.* The Officer-in-Charge was therefore correct in finding § inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address whether the grant of a waiver of inadmissibility is warranted.

The waiver for unlawful presence is found under section 212(a)(9)(B) of the Act, which 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.

A waiver under section 212(a)(9)(B)(v) of the Act is dependent upon the applicant’s 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 and to his or her child is not a consideration under section 212(a)(9)(B)(v) of the Act, and unlike section 212(h) of the Act where a child is included as a

³ Section 212(a)(9)(A)(ii) of the Act provides in pertinent part:

(ii) Other aliens

Any alien not described in clause (i) who –

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of any alien convicted of an aggravated felony) is inadmissible.

⁴ 8 C.F.R. §§ 241.7, 1241.7; 8 U.S.C. § 1101(g).

qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] the applicant's lawful permanent resident spouse.

Section 212(i) of the Act provides a waiver of inadmissibility for fraud or willful misrepresentation. It provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver is dependent upon showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Similar to the waiver for unlawful presence, any hardship to the applicant and to his or her child is not a consideration under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED]

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" and establishing it 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 the Board of Immigration Appeals (BIA) considers relevant in determining whether an applicant has established extreme hardship under 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. 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).

Applying *Cervantes-Gonzalez* here, extreme hardship to [REDACTED] must be established if he remains in the United States without his wife, and alternatively, if he joins her 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.

On appeal, counsel describes [REDACTED]'s life in Mexico and conveys that [REDACTED] and her adult son live at [REDACTED]'s grandparent's ranch in Guanajuato, Mexico. Counsel states that [REDACTED], who is 61 years old, has a titanium plate in his head. She states that he had operations to his head because of lesions that continue to return. She indicates that [REDACTED] **does not drive a vehicle, has worked in menial positions, and depends upon his daughters for emotional and logistical support.** Counsel conveys that the [REDACTED]s depend upon their three adult children for their support and well-being. Counsel states that the [REDACTED]'s son lives with his mother in Mexico even though he has a wife and three children in the United States. She states that the [REDACTED]'s two daughters, who live in Texas, work and have seven children between them. According to counsel, [REDACTED] dreads leaving his wife alone in Mexico. Counsel states that the [REDACTED]s do not have sufficient finances, medical insurance, or emotional or material resources to live independently. Counsel states that [REDACTED] and her husband do not drive and have little formal education.

To establish extreme hardship to [REDACTED] the record contains income tax returns, letters, and other documents.

The submitted income taxes returns for 2002 reflect income of \$16,045, show [REDACTED] as a dependent son, and indicate [REDACTED]'s business had gross income of \$97,064 and net profit of \$4,749. Mr. [REDACTED] earned wages working at an egg farm in Texas, as shown by the 2002 wage statement reflecting \$8,613 in year-to-date gross wages. For 2003, the income tax returns show net profit in business income of \$11,879. For 2004, the W-2 Form reflects [REDACTED] income of \$16,738 with Tyson Poultry, Inc., and the 2004 income tax records show \$17,949 in income.

The letter by [REDACTED], M.D., conveyed that he is providing a medical report and patient history at the request of [REDACTED] who he examined at his office on January 16, 2006. Mr. [REDACTED] stated that Mr. [REDACTED] described a five-year history of infection on his right-front temporal area, with lesions that were operated on several times, but recurred. He stated that [REDACTED] indicated that the tumors recurred after trauma to his forehead two years ago, and nine months after the operation. He stated that [REDACTED] conveyed that he had a number of surgical procedures on his head including replacing a part of his skull with a titanium plaque. Mr. [REDACTED] indicated that [REDACTED]'s right temporal area shows a pair of red, shiny bumps, 2 inches in diameter, fixed to the underlying structures. He stated that the edge of the metal plate is felt posteriorly to the affected area. Mr. [REDACTED] indicates that the formations should be observed and repeating "surgical intervention if any signs of nervous system involvements."

In the letter dated November 26, 2005, [REDACTED] stated that he has been experiencing extreme hardship without his wife. He stated that he and his wife call each other for moral support when they are sick; it is a blessing when a husband and wife pay expenses together; he would like to take English classes but cannot because he is the only one working; separation from his wife has been difficult and he does not wish to burden his children; and his wife is missed by members of her church in Texas and by her four children and grandchildren in the United States.

There is another letter, dated December 10, 2004, by [REDACTED] however, it is not translated into the English language. The regulation under 8 C.F.R. § 103.2(a)(3) states that “[a]ny document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, “Bureau”] 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.” Because [REDACTED] failed to provide the English translation of this letter, it carries no weight in the hardship assessment.

In rendering this decision, the AAO has carefully considered all of the submitted evidence.

Counsel claims the [REDACTED] adult children have been providing financial support to their parents, but no records have been submitted of their financial support. Although records of [REDACTED]’s income have been provided, there is no documentation of his household expenses, and without such documentation, the AAO cannot assess whether [REDACTED]’s income alone is insufficient to meet monthly expenses. Furthermore, for 2002, the record indicates that [REDACTED]’s income alone supported his family, even though his wife lived in the United States that year. 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)). Thus, the record fails to show extreme financial hardship to [REDACTED] if he were to remain in the United States without his wife.

With regard to family separation, courts in the United States have stated that “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).

However, 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[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)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The letter by [REDACTED] in support of the waiver application conveys his concern about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED], if he remains in the United States, 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 is insufficient to show that the emotional hardship, which will be endured by Mr. _____ is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shoostary, Perez, and Sullivan, supra.*

The AAO finds that the hardship factors raised, both individually and in the aggregate, do not in this case constitute extreme hardship to _____ if he were to remain in the United States without his wife.

The conditions in the country where _____ would live if he joined his wife 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).

There is no claim made that _____ would experience extreme hardship if he were to join his wife to live in Mexico.

The economic and social disruptions involved in removal have not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Having found _____ 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 sections 212(a)(9)(B)(v) and 212(i) 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. The application will be denied.

ORDER: The appeal is dismissed. The application will be denied.