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U.S. Citizenship  
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FILE:

CDJ 2004 787 018

Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 23 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 Officer, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 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 and live with his wife. 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 26, 2006. The applicant submitted a timely appeal.

On appeal, counsel states that the applicant's spouse, [REDACTED] has parents, siblings, and a grandparent who are U.S. citizens or lawful permanent residents. He states that [REDACTED] resides with her parents and three of her siblings and has no family members in Mexico. Counsel states that [REDACTED] has lived in the United States for 12 years and helps her parents with their errands. He states that it would be unaffordable for [REDACTED] parents to visit or telephone her if she lived in Mexico. Counsel indicates that [REDACTED] would live in Morelia, Michoacan, Mexico, a place of appalling social and economic conditions and high unemployment. Counsel conveys that [REDACTED] is employed as a lead person and depends upon her wages to pay expenses, and finding employment in a small rural community in Mexico would be impossible for her. Counsel conveys that [REDACTED] has had clinical depression since learning of her husband's 10-year inadmissibility.

The AAO will first address the findings 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 the applicant entered the United States without inspection in June 1998 and remained until October 2005. The applicant therefore accrued seven years 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, 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, 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,

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<sup>1</sup> Memorandum by [REDACTED], 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.

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 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).

In addition to other documents, the record contains a birth certificate, a marriage certificate, a naturalization certificate, letters, and a psychological evaluation. The AAO notes that the letter dated October 31, 2005, by [REDACTED] is written entirely in Spanish. The regulation under 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any 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 the letter has no English translation the letter will carry no weight in these proceedings. *See* 8 C.F.R. § 103.2(a)(3).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s qualifying relative must be established in the event she or he joins the applicant to live in Mexico, and alternatively, if she or he 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.

The psychological evaluation of [REDACTED] by [REDACTED] with Madrid Psychological Associates, dated July 1, 2006, conveys that [REDACTED] states that she has not been the same since the waiver application’s denial. She states to [REDACTED] that she has not been able to eat, sleep, or stay focused and that this is so disruptive that it has interfered with her ability to work around dangerous machinery, as required by her job. [REDACTED] states that she is anxious all the

time and her mood is unstable, and her weight dropped dramatically. [REDACTED] states that test results show [REDACTED] is experiencing clinical depression and post-traumatic stress disorder, which is beyond the normal grieving or emotional reaction expected under the circumstances. He relays that [REDACTED] states that she has acid reflex, fatigue, heart palpitations, and disturbing nightmares and that she is anxious and often feels overwhelmed to the point of having panic attacks. The letter by [REDACTED], pastoral associate with Cathedral of St. Andrew, states that [REDACTED] and her husband were married at her church five years ago and separation has been a great hardship on [REDACTED] and her husband. She conveys that [REDACTED] helps at the church during Sunday services.

Counsel is correct in stating that 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”). The record contains a psychological evaluation of [REDACTED] and letters attesting to the emotional hardship she has experienced on account of separation from her husband.

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); and *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), (the common results of deportation are insufficient to prove extreme hardship; extreme hardship is hardship that was unusual or beyond that which would normally be expected upon deportation).

The AAO typically concludes that when a mental health provider bases a psychological evaluation on a single interview with a patient the results of the mental health provider's findings are speculative. With the situation here, however, in view of [REDACTED] psychosomatic symptoms and her concern about its impact upon her ability to function around dangerous machinery, the AAO finds that the emotional hardship of [REDACTED] if she remains in the United States without her husband is not typical to individuals separated as a result of removal and does in this case rise to the level of extreme hardship as required by the Act.

Counsel states that [REDACTED] would not find employment in Mexico; however, there is no documentation in the record substantiating this claim. 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 regard to [REDACTED] separation from family members, in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child." The AAO finds that [REDACTED] separation from her parents and other family members does not conclusively establish extreme hardship.

In the final analysis, the AAO finds that extreme hardship to [REDACTED] has been established if she were to remain in the United States without her husband. However, in considering the furnished evidence both individually and in the aggregate the AAO finds that it fails to establish extreme hardship to [REDACTED] if she were to join her husband to live in Mexico.

It is concluded that the factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 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 he 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.