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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**U.S. Citizenship  
and Immigration  
Services**

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FILE:



Office: CUIDAD JUAREZ, MEXICO

Date:

**MAR 30 2009**

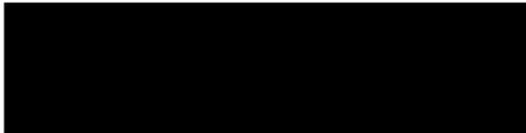
IN RE: Applicant:



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:



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 Officer-in-Charge (OIC), Ciudad Juarez, 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 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), so as to join her lawful permanent resident spouse in the United States. The OIC concluded that the applicant had failed to establish that her 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 OIC*, dated September 20, 2005. The applicant submitted a timely appeal.

On appeal, counsel states that the applicant has a U.S. citizen daughter and grandson living in the United States. He states that the applicant's spouse has been working for a plastics company for ten years and must remain in the United States to earn a living and that the applicant's family is well-established and is purchasing a house. The applicant, counsel states, has medical problems that are described in [REDACTED] letter. Counsel states that the applicant's husband and daughter are worried about the applicant's health and their separation from her. Counsel states that the applicant's daughter attends school and living in Mexico would be an extreme hardship on her.

The AAO will first address the finding of inadmissibility for unlawful presence under section 212(a)(9) of the Act, which provides, in pertinent 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* 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 record reflects that the applicant entered the United States without inspection in 1985, remaining in the country until January 24, 2004, at which time she departed to Mexico. For purposes of section 212(a)(9)(B) of the Act, the record indicates that the applicant accrued unlawful presence from April 1, 1997 until January 24, 2004. The record suggests that the applicant had employment authorization for two years, although neither the dates of the authorized employment nor the section of law under which the employment was authorized are provided. Even taking into account the applicant's possible two years of employment authorization during the period of April 1, 1997 to January 24, 2004, she still would have accrued more than one year of unlawful presence during that six-year period; and consequently, her departure to Mexico on January 24, 2004, triggered the ten-year-bar, rendering her 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 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 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 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

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

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 lawful permanent resident 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 in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors, which relate to the applicant's qualifying relative, 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 spouse must be established in the event that he joins the applicant to live in Mexico, and alternatively, if he remains in the United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In support of the waiver application, the record contains letters, an affidavit, birth certificates, a marriage certificate, and a medical report, in addition to other documentation.

The letter by [REDACTED] conveys that the applicant has, in addition to other health problems and symptoms, moderate iron deficiency anemia and superficial veins for which she received iron efficient vitamins and anti-varicose vein treatment. [REDACTED]'s letter is not sufficiently detailed for the AAO to determine the significance of his diagnosis and whether the applicant's health problems are of a serious or minor nature.

The affidavit of the applicant's U.S. citizen daughter conveys that she is a student and her mother assists in babysitting her child, cooking, household chores, and in contributing to the family's income and providing emotional support. The letter by [REDACTED] Alternative Education Programs reflects that the applicant's daughter is a full-time student.

The letter by the applicant's husband is in the Spanish language and has not been translated into English. The regulation under 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service 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.

As the applicant's husband's letter is not accompanied by a full English language translation which the translator has certified as complete and accurate, the AAO cannot determine the letter's content and its value in establishing extreme hardship.

In rendering this decision, the AAO has carefully considered all of the documentation in the record.

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, the Ninth Circuit has 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); *Shooshtary 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)(citations omitted).

The applicant's U.S. citizen daughter has expressed concern about separation from her mother. Any hardship to the applicant's U.S. citizen daughter as a result of separation from her mother will be considered only to the extent that it results in hardship to the applicant's lawful permanent resident spouse.

Counsel states that the applicant's spouse is concerned about separation from his wife. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant's husband, if he remains in the United States without his wife, 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 that will be endured by the applicant's spouse is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Patel, Shooshtary, Sullivan, supra.*

Although the applicant's daughter states that her mother contributed to the family's household income, the record contains no documentation of the applicant's income and her family's household expenses, which would be needed to show that her husband requires her income to meet monthly

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).

Counsel indicates that the applicant's husband has employment and family ties to the United States and is purchasing a house. *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978) indicates that "the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship." (citing *Lee v. INS*, 550 F.2d 554 (9<sup>th</sup> Cir. 1977).

The AAO notes that the applicant's husband's ties in Mexico would be his wife and her three adult children who live in Mexico.

In considering the evidence in the totality, the AAO finds that the applicant's husband would not experience extreme financial or emotional hardship if he were to remain in the United States without his wife. Furthermore, the totality of the record fails to demonstrate extreme hardship to him if he were to join his wife to live in Mexico. Thus, 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), of the Act, has not been established.

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. The application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.