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



H6 #2

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 08 2009
CDJ 2004 726 042

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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 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 is the spouse of [REDACTED] a citizen of the United States. 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 immigrate to the United States. The director 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 District Director*, dated December 17, 2006. The applicant filed a timely appeal.

On appeal, counsel states that the primary hardship to [REDACTED] if his wife is not permitted to re-enter the United States will involve [REDACTED] two-year-old son. He states that [REDACTED] will be a single parent if his son lived with him in the United States and that he would have to move to Mexico for his son to have both parents. Counsel indicates that [REDACTED] feels that moving to Mexico may not be in his son's best interest because health care in Mexico is substandard; his son's health may be affected by Mexico's water, food, and climate; and his son's educational opportunities will not be the same as in the United States. Counsel states that all of [REDACTED] immediate family members live in the United States. Counsel indicates that the applicant's absence has created economic hardship as [REDACTED] earns \$34,700 annually will have to support the applicant in Mexico, which will significantly burden [REDACTED] and [REDACTED] will have to pay full-time childcare if his son lives with him. Counsel indicates that it is likely that [REDACTED] will not be able to find work in Mexico, especially if she has the child. He states that [REDACTED] parents live and work in the United States and are unable to assist with their grandson if he were to live with Ms. [REDACTED] in Mexico. If [REDACTED] relocated to Mexico, counsel states that [REDACTED] would try to find a job in Mexico even though [REDACTED] never lived there. Counsel submits additional evidence on appeal.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) 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.

....

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

...

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in April 2001 and remained in the country until March 2006. The applicant accrued unlawful presence from October 25, 2003, when she turned 18 years old, to March 2006, and triggered the ten-year-bar when she left the United States, 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 found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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.

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 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. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. 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-Morales*, 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). *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 rendering this decision, the AAO has carefully considered all of the evidence in the record including the report by [REDACTED] the affidavit by [REDACTED], the psychological evaluation by [REDACTED] the affidavit by [REDACTED] the affidavit by Josefina Reyes, the letter by [REDACTED] e letter by [REDACTED] and other documentation.

The AAO notes that the record contains a letter dated March 8, 2006 by Mr. Viveros which does not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(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.

In that the March 8, 2006 letter is written completely in Spanish and has no translation, that letter will carry no weight in this proceeding.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s husband must be established in the event that he remains in the United States without the applicant, and alternatively, if he 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.

Counsel indicates that [REDACTED] would experience extreme financial hardship if he were to remain in the United States without the applicant. [REDACTED] states in his report that [REDACTED]

conveys that he is in substantial debt due to supporting his family. However, there is no documentation in the record of [REDACTED] income and expenses; such documentation is needed to demonstrate that [REDACTED] income is insufficient to meet his financial obligations. 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)).

[REDACTED] is concerned about separation from his wife and children. 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 report by [REDACTED], a licensed clinical social worker, conveys that [REDACTED] indicates that the applicant has a depressive disorder predating her move to Mexico. He states that [REDACTED] conveys that his wife had a suicide gesture in 2002 and that he is concerned about the well-being of the applicant and their children. [REDACTED] states that [REDACTED] reports that [REDACTED], his oldest child who is four years old, has been showing some evidence of regression in response to the stress of relocating to Mexico and living with his wife. [REDACTED] reports that [REDACTED] witnessed his mother in distress, holding a knife. [REDACTED] conveys that [REDACTED] sought psychological care in the past. The letter dated August 25, 2009 by [REDACTED] conveys that his wife was taking anti-depressant medication prescribed by [REDACTED] but stopped because of her pregnancy. He states that there are two witnesses to her suicide attempt. The letter by [REDACTED] and the letter by [REDACTED] are submitted to demonstrate [REDACTED] psychological state. [REDACTED] saw [REDACTED] on July 11 and 18 in 2009. She states in her letter that [REDACTED] has anxiety and severe depression disorder and is receiving therapy but without a prescription due to her pregnancy. [REDACTED] conveys that [REDACTED] reported receiving medical treatment, including medication, with [REDACTED] for about two years until her pregnancy. With regard to [REDACTED] the letter by [REDACTED] conveys that she saw [REDACTED] four times in July 2009 and that [REDACTED] “shows an emotional instability due to his parents['] situation.” She states that [REDACTED] is mad with his father and sad “because mommy cries all the time.” [REDACTED] conveys that [REDACTED] could be facing a challenging negative disorder if the signals of sadness and instability continue.

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 letters from the psychiatrists and affidavits of friends establish the severe depression of the applicant. In view of her condition, the AAO finds that the situation of [REDACTED], if he remains in the United States without his spouse, rises to the level of extreme hardship. The record shows that the emotional hardship to be endured by [REDACTED] as a result of concern about the well-being of his wife and children, is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan and Perez, supra.*

With regard to joining the applicant to live in Mexico, [REDACTED] states in his letter dated August 25, 2009 that he was born in California, all of his family are U.S. citizens who live in the United States, and that his Spanish is "ok, but I am limited to certain things." He states that because he is a U.S. citizen he will be taken advantage of if he tries to find work and that he would have to take a cut in pay if he moved to Mexico.

Even though [REDACTED] indicates that he would be taken advantage of if he sought employment in Mexico and would receive a pay cut, in *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981), the U.S. Supreme Court upheld the finding that economic detriment alone is insufficient to establish extreme hardship. Furthermore, the AAO notes that Mr. Viveros does not make the claim that he would be unable to obtain any employment in Mexico.

Although [REDACTED] asserts that he would be separated from his family members in the United States, the AAO finds that he would not be alone in Mexico as he would be with his children, and his wife and her relatives.

When considered both individually and collectively, 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 she 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), the burden of establishing that the application merits approval 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. The waiver application is denied.