

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

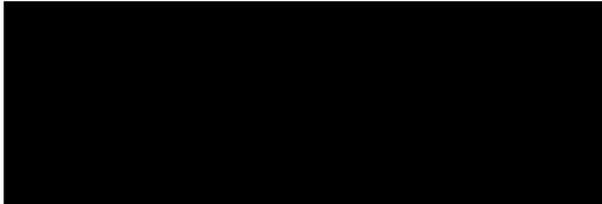
U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H6



FILE: [Redacted]  
CDJ 2004 760 552

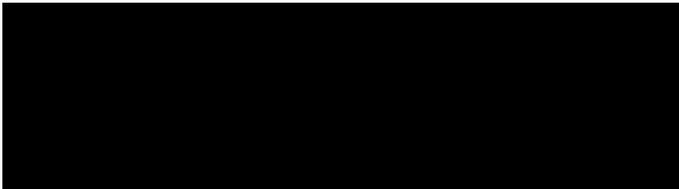
Office: MEXICO CITY (CIUDAD JUAREZ) Date:

APR 19 2010

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:



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 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 is the spouse of [REDACTED], who is 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 13, 2006. The applicant filed a timely appeal.

On appeal, counsel asserts that [REDACTED] declaration and the medical records demonstrate extreme hardship to [REDACTED] if the waiver is denied.

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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant accrued unlawful presence from October 2001, the date of her entry without inspection into the United States, until December 2005, when she left the country and triggered the ten-year bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. 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 is not a consideration under the statute, 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 husband. 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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative 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 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).

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

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins her 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.

With regard to remaining in the United States without the applicant, in his declaration dated February 8, 2007, ██████████ makes the following statements. He and his wife had three children

together, two U.S. citizen sons and a lawful permanent resident daughter. He has three children from a prior marriage. His mother, who is a 75-year-old lawful permanent resident, has heart problems, high blood pressure, diabetes, arthritis, and dizziness. He cannot leave the United States because he spends at least one to two hours every day visiting her and taking care of her, including feeding her, giving her medicine, and taking her to doctor visits. His wife assisted in the care of his mother and took care of their six children while she was in the United States. He was recently diagnosed with psychological distress by his medical doctor and was prescribed medication. He is depressed because of separation from his wife and the children they had together. He cannot have the children with him because of his job and due to the care he provides for his mother. He cannot have his daughter with him because he cannot supervise her and transport her to and from school. His second oldest child was not able to start school in the United States and his children missed having their physical examinations and immunizations in the United States. He is worried about his children's health in Mexico because of the lower quality of healthcare there. His health insurance does not cover his children while they live in Mexico. He wants his children to be educated in the United States and to speak English. It is difficult for his daughter to adapt to life in Mexico because she attended school in the United States since she was three years old and is having trouble adjusting to Spanish because it is a language she does not frequently use. He earns \$15.00 an hour as a shipping and receiving clerk and in Mexico would not obtain this type of job without a union contract. In Mexico, shipping and receiving clerks earn \$70 per week, which income is not enough to take care of his family and mother. He has a close relationship with his wife and needs her emotional support. The letter by [REDACTED] dated January 12, 2007 conveys that [REDACTED] has significant psychological distress concerning his family's situation and he prescribed him medication. [REDACTED] mother has prescriptions for high blood pressure, dizziness, arthritis, and diabetes.

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). In *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).

[REDACTED] claims to have depression due to separation from his wife and children and the letter by his physician confirms his treatment for depression. The AAO acknowledges that [REDACTED] has had and may continue to have emotional hardship due to separation from his wife and children, which emotional hardship is a factor in our analysis. However, we find that [REDACTED] has not fully explained how his emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission. He conveys that he must have his wife in the United States for emotional support, to take care of his six children, and to assist in taking care of his mother. However, he has not addressed why he cannot employ someone to supervise his children and

transport them to and from school while he is at work. Furthermore, according to the family law judgment contained in the record, the children from his prior marriage are at least 18 years old, so he is no longer financially responsible for them. Furthermore, their physical custody was awarded to his former spouse. [REDACTED] has not provided documentation of all of his expenses, which records are need to show that his income is insufficient to pay for his children's health care in Mexico. Even though [REDACTED] mother has health problems, the record does not convey that her health is so debilitated that she is dependent upon her son and is unable to take care of herself. Lastly, [REDACTED] has not explained why his mother is unable to live with and be taken care of by his sisters in the United States.

The hardship factors alleged here are the psychological distress [REDACTED] has experienced since his three children and his wife left the United States, his need to have his wife in the United States to take care of his six children and his mother, and his concern about having health care for his children. [REDACTED] has shown that separation from his wife and children and concern about his mother is causing him psychological distress, a condition for which he is receiving treatment. However, he has not fully addressed why he must be separated from his young children or why he must take care of his mother. He has not explained why he cannot have a care provider for his children while he is at work. Except for his rental agreement, which shows monthly rent of \$835, the record does not suggest that he cannot afford a care provider. [REDACTED] needs to present additional evidence of his financial obligations to demonstrate that he cannot afford a care provider for his children. [REDACTED] has not sufficiently addressed why his mother is unable to take care of herself, and furthermore, why she cannot live with one of her daughters. He has not provided sufficient evidence of his financial obligations to show that he is unable to afford medical care for his children while in Mexico. He has provided no corroborating documentation to show that the level of health care in Mexico is so low that it jeopardizes the well-being of his children. Lastly, [REDACTED] needs to fully explain how his emotional hardship due to separation from his wife is unusual or beyond that which is normally to be expected from an applicant's bar to admission. When the combination of hardship factors is considered in the aggregate, the AAO finds they fail to establish extreme hardship to [REDACTED] if he remained in the United States without his wife.

With regard to joining his wife to live in Mexico, [REDACTED] declares that he cannot obtain employment as a shipping and receiving clerk because he is not a union member. However, he has provided no corroborating documentation to show that such a job requires union membership, and that the salary of a shipping and receiving clerk is insufficient to support himself and his wife and three children. He has not provided any documentation of the financial support that he provides his mother or explained why his sisters are unable to financially assist her. The record suggests that he is no longer obligated to financially support his children from his prior marriage. [REDACTED] is concerned about his children adapting to life in Mexico and receiving their education there. The record suggests that due to the age of his children, who were 4 months old, three years old, and five years old when they went to Mexico, and their familiarity with the Spanish language, they are able to understand educational instruction in Spanish. Moreover, the AAO notes that [REDACTED] daughter was born in Mexico on December 25, 2000 and lived in Ciudad Obregon, Sonora, Mexico, with the applicant until her illegal entry to the United States in October 2001. Although [REDACTED] expresses concern about the health of his children in Mexico, there is no documentation in the record suggesting that one of his children has a serious health problem for which treatment is unavailable in Mexico.

When the factors presented in this case are considered collectively, which factors are [REDACTED] concern about obtaining employment as a shipping and receiving clerk, his children's education and ability to adapt to life in Mexico, his mother's well-being if he no longer takes care of her and financially supports her, and health care for his children, they fail to show that [REDACTED] would endure extreme hardship as a result of living in Mexico with his wife. [REDACTED] has not shown that his children would not adapt to life in Mexico, that they would not be able to understand educational instruction in English, that he would be unable to obtain employment that would support his family, that he must financially support and take care of his mother and children from his prior marriage, and that the level of health care in Mexico is so low that it places his children in jeopardy. Thus, the applicant has not established that the combination of hardship factors demonstrate that her husband would experience extreme hardship if he joined her to live in Mexico.

Because the applicant is statutorily ineligible for relief, no purpose is 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) of the Act, 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.