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U.S. Citizenship  
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#6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 16 2010  
CDJ 2004 799 404

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 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 his 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 November 30, 2006. The applicant filed a timely appeal.

On appeal, counsel states that only the letter from [REDACTED] was considering in determining hardship. Counsel states that [REDACTED] indicates that [REDACTED] has major depressive disorder due to her husband's absence. Counsel states that because [REDACTED] does not speak Spanish, she would be devastated if uprooted to Mexico and that her lack of fluency in Spanish would hamper her future ability to support her family. Counsel contends that [REDACTED] physical and mental trauma exceed the normal separation referred to in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). Counsel states that [REDACTED] is not employed, and when she is employed she will have difficulty taking care of her family without her husband's financial support. Counsel states that [REDACTED] has custody over U.S. children who are ill and require medical supervision and that this impacts [REDACTED] and her ability to cope without the financial and emotional support of her husband. He states that the illness of [REDACTED] children would impact [REDACTED] if she were to live in Mexico. He states that the evidence submitted on appeal establishes that the waiver should be granted.

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 1997. He turned 18 years old on May 29, 2000. The applicant therefore began to accrue unlawful presence from May 29, 2000, the date on which he turned 18 years old, until November 2005, when he left the country and triggered the ten-year bar, 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 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).

The record contains a psychological evaluation, medical documents, birth certificates, letters, a child support payment history, and other documents.

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

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

In regard to remaining in the United States without his spouse, [REDACTED] states that it is difficult for her to explain to her son, [REDACTED], why his father cannot live with them. She conveys that she has a close relationship with her husband and is depressed and lonely without him. She states that uprooting to live in Mexico, where she does not speak the language, would destroy her because the United States has better jobs and a better life. She states that it is easy for her husband and her to find employment in the United States, but it would be impossible in Mexico. [REDACTED] indicates that she recently lost her job due to a company closing and it is important to her to have her husband in the United States so he can work and support the family. The record reflects that [REDACTED] and the applicant have a son, [REDACTED], who was born on March 8, 2002. Through another relationship she has a son who was born on March 1, 2005, and a daughter who was born on October 31, 2006.

In the psychological evaluation dated December 19, 2006, [REDACTED] reported the following. [REDACTED] four-year-old son visited the applicant in Juarez, where the applicant and his father are employed as construction workers. He cries because he misses his father. [REDACTED] had marital problems over two years ago and had a period of separation. [REDACTED] became involved with another man with whom she has two other children. [REDACTED] and the three children live in a low income apartment complex. She receives \$361 per month for child support for her 21-month-old son, but nothing yet for her daughter. She has Medicaid, but receives only \$424 per month in food stamps, and obtains formula for her infant through the WIC Program. [REDACTED] states that her husband forgave her for having a relationship with the other man, that she regrets her "bad judgment," and that she has been extremely lonely since her husband has been gone. [REDACTED]

states she has limited social support from her family members. She states that she lost her job in February of 2006 and lived on severance pay and then employment benefits until they expired, and cannot find a job that provides healthcare and pays enough for childcare. She lives on less than \$800 each month plus WIC commodities. She considered moving to Mexico, but does not speak the language spoken there and believes her level of poverty would be worse there. [REDACTED] diagnosed [REDACTED] with Major Depressive Disorder due to separation from her husband.

The record shows that [REDACTED] employment with Tyson Foods terminated on April 16, 2006. She received unemployment benefits, when ended in August 2006. Medical records show that one of [REDACTED] children received WIC and Medicaid benefits in 2006.

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 (9<sup>th</sup> 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).

A medical record of [REDACTED] oldest son conveys that he was qualified to receive Medicaid benefits in 2004 and that he received Medicaid and WIC benefits in 2006. Since the expiration of [REDACTED] unemployment benefits, she and her children have received governmental assistance in the form of WIC and Medicaid benefits. [REDACTED] indicates that she cannot find a job that provides healthcare and pays enough to pay for childcare. In view of [REDACTED] financial condition, the AAO finds that she has experienced, and will continue to experience, extreme financial hardship without the financial support of her husband. In view of the record, the AAO finds that the applicant established that the situation of [REDACTED] if she remains in the United States without her spouse, rises to the level of extreme hardship.

With regard to joining her husband to live in Mexico, [REDACTED] claims that it would be impossible for her and her husband to find employment in Mexico. [REDACTED] claim is undermined by the fact that her husband and father-in-law are reportedly employed in Mexico as construction workers. Even though [REDACTED] states that she does not read or write in the Spanish language, the impact of living in Mexico and acclimating to its culture would be alleviated by the presence of her husband and his family members. Counsel asserts that [REDACTED] children are ill and require medical supervision. The submitted medical records do not convey that any of [REDACTED] children has an ongoing, serious medical condition. The applicant has established extreme hardship to his wife if she were to remain in the United States without him; however, he has not established that she would experience extreme hardship if she were to join him to live in Mexico.

When all of the factors raised in this case are considered collectively, the AAO finds they do not constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

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 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.