

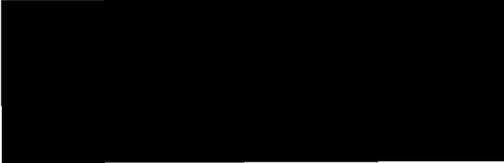
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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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H2
H6

JAN 22 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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:

SELF-REPRESENTED

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).

Michael Shumway

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 Mr. [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 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 February 16, 2007. The applicant filed a timely appeal.

On appeal, on [REDACTED] makes the following statements. His spouse has five U.S. citizen children and he is the father of her last child. The children were born on July 19, 1994, June 30, 1996, August 17, 2000, and June 29, 2004; they live with him and are doing well in school. He earns enough money to support the family, but finds it difficult raising the children without his spouse. His second oldest stepchild takes medication for attention-deficit hyperactivity disorder and his wife is needed to help his stepchild. If the applicant's spouse is not admitted to the United States, her children would most likely join her in Mexico and their standard of education, environment, and medical care would be reduced. His wife's mother and siblings are lawful permanent residents in the United States and his mother-in-law needs surgery and requires care from her daughters, including his wife.

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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1996. She accrued unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until February 2006, 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, 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.¹ 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-Moralez*, 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,

¹ The AAO notes that the record contains no documentation showing that the applicant's mother is a lawful permanent resident of the United States.

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 letters, school documents, a medical report, a Western Union transmittal, and other documentation. 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.

The AAO notes that the undated letter by Mr. [REDACTED] 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 U.S. Citizenship and Immigration Services] 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 undated letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

In regard to remaining in the country without his spouse, Mr. [REDACTED] conveys that it is difficult raising his child and stepchildren, especially his stepson who has attention-deficit hyperactivity disorder, without his wife. Mr. [REDACTED] claims that if his wife is not admitted to the United States, his child and stepchildren will join their mother in Mexico, where they will have a lower level of education, environment, and medical care.

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 AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record before the AAO, however, fails to establish that the situation of Mr. ██████ if he remains in the United States without his spouse, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by Mr. ██████ in remaining in the United States without his wife, is unusual or beyond that which is normally to be expected from an applicant’s bar to admission. *See Hassan and Perez, supra*.

It is noted that although Mr. ██████ is concerned that his mother-in-law will experience hardship due to the applicant’s absence, there is no documentation in the record demonstrating that Mr. ██████ mother-in-law is a lawful permanent resident of the United States. 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)).

Mr. ██████ claims that his child and stepchildren would have reduced educational opportunities, medical care, and environmental standards if they lived in Mexico, but documentation has not been provided in support of Mr. ██████ 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, supra*. Furthermore, Mr. ██████ fails to specify the hardship that he will endure as a result of hardship to his child and stepchildren.

Neither Mr. ██████ nor the applicant claims that Mr. ██████ would experience extreme hardship if he were to join his wife to live in Mexico.

When all of the factors raised in this case are considered both individually and collectively, the AAO finds the factors 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.