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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**

*H2 H6*

JUN 03 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*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 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 a U.S. citizen. 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 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. The applicant filed a timely appeal.

On appeal, the applicant's wife asserts in a letter dated September 8, 2006, that she and her three children, who range in age from 2 to 15 years old, miss the applicant. She contends that because she cannot afford childcare her mother, who lives in New Mexico, is staying with her to assist with the children, which is causing a strain on her mother's marriage. In the appeal brief, the applicant's wife indicates that in February 2007 she moved from Commerce City, Colorado, to El Paso, Texas, and in March 2007 moved to Ciudad Juarez, Mexico, to live with her husband. The applicant's wife conveys that she has not yet adjusted to living in Mexico, that her children never adjusted and that their situation in Ciudad Juarez caused them to develop health problems. The applicant's wife states that [REDACTED] her oldest child, developed stomach problems, headaches, and depression in Mexico. She conveys that her middle child, her son, took medicine for allergies but continued to have allergy symptoms in Mexico. She asserts that her two older children live in Commerce City now, so she travels there to spend time with them. The applicant's wife asserts that her youngest child had three visits to a local emergency room within five months. She conveys that a doctor treated her for unexplained stomach aches, headaches, and hair and weight loss. She avers that her husband lost weight and has tension headaches due to stress and worry. She claims that he has depression, but will not seek treatment. She indicates that she is submitting copies of receipts from trips, a letter from the doctor, and copies of her youngest child's emergency room visits.

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 January 1998 and remained in the country until he left on August 30, 2006. He therefore accrued unlawful presence from January 1998 until August 30, 2006, 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.

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 unlike section 212(h) of the Act, for which a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant and to his stepchildren and child 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-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). 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).

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 him 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 the applicant’s wife remaining in the United States without the applicant, the applicant’s wife indicates in the appeal notice that she now lives with the applicant in Mexico, and visits her two older children who live in Commerce City, Colorado. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. The Ninth Circuit stated that “the most important single hardship factor may be the separation of the alien from family living in the United States” and that there must be a careful appraisal of “the impact that deportation would have on children and families.” *Id.* at 1293. Furthermore, the Ninth Circuit indicated that “considerable, if not predominant, weight,” must be attributed to the hardship that will result from family separation. *Id.* In *Yong v. INS*, 459 F.2d 1004 (9th Cir. 1972), the Ninth Circuit reversed a BIA decision denying an application for suspension of deportation, noting that “[s]eparation from one’s spouse entails substantially more than economic hardship.” *Id.* at 1005. Similarly, the Third Circuit in *Bastidas v. INS*, 609 F.2d 101 (3rd Cir.1979) explicitly stressed the importance to be given the factor of separation of parent and child.

The hardship factor asserted here is the applicant’s wife’s emotional hardship as a result of separation from her husband. We note that the applicant’s wife expresses concern about her husband’s physical and mental health, and in March 2007, joined the applicant to live in Mexico. In view of the substantial weight that is given to family separation in the hardship analysis, and in light of the significant emotional hardship that the applicant’s wife indicates that separation from the applicant has had on her, to the extent that she decided to join him to live in Mexico, we find the applicant has demonstrated that the hardship that his wife will experience as a result of separation from him is extreme.

With regard to the applicant’s wife joining the applicant to live in Mexico, the applicant’s wife indicates that she and her children moved to Ciudad Juarez, Mexico, to live with the applicant, and that she has not adjusted to living there, and that her children now live in Commerce City because they never adjusted to Mexico. She conveys that she makes trips to Commerce City to spend time with her two older children. The applicant’s wife, however, does not indicate that she has experienced extreme hardship as a result of separation from her two older children, and the record suggests that her daughter and son are no longer minor children. Furthermore, the applicant’s wife has not indicated that her son and daughter depend on her financially or emotionally. We note that in *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968), the BIA considered the scenario of

parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12. Consequently, we cannot conclude that the applicant has demonstrated that his wife will experience extreme hardship as a result of joining him to live in Mexico.

The applicant has demonstrated extreme hardship to his wife if she remained in the United States without him; however, he has not shown that she would experience extreme hardship if she joined him to live in Mexico. As such, the factors presented in this case do not 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).

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