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U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: CDJ 2004 801 762

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).

*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 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 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, June 8, 2007.* The applicant filed a timely appeal.

On appeal, counsel contends that the waiver applicant should be approved based on the declarations, birth certificate, criminal disposition, statement by [REDACTED] sister, and photographs submitted on appeal.

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 February 1983 and remained in the country until April 2006. He therefore began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until April 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 will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] 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).

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 her to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of an applicant’s waiver request.

In a letter submitted on appeal the applicant claims that he has a close relationship with his spouse, whom he married on June 18, 2002. [REDACTED] states that she was born on May 31, 1932, that her

parents are deceased, that she has 15 siblings, and children. She maintains that all of her family members were born in the United States. She states that she has a second grade education because she had to work while young. [REDACTED] declares that she had a difficult first marriage because she endured emotional and physical abuse from her husband, who died in 1998. She asserts that in April 2000 she met the applicant, and even though he is 32 years her junior, they have a close relationship and her family members accept the applicant. She contends that she is afraid of being alone, that most of her children and siblings live far away from her, and that she has been depressed and has felt ill since the applicant has been away. She asserts that she cannot afford to be sick because her job as a housekeeper requires her to work hard. In her April 24, 2006 letter, [REDACTED] states that she is not in good health due to her depression, extreme nervousness, and chronic fatigue, which condition she has had for a couple of years. She contends that her mental health has deteriorated due to separation from her applicant. She claims that the applicant handles all of her medical problems. The letters from [REDACTED] family members affirm that she has a close relationship with the applicant and has been lonely without him.

Family separation must be considered in determining hardship. *See 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).

Although [REDACTED] contends that her mental and physical health has declined as a result of separation from the applicant, she has submitted no medical records or other evidence demonstrating that she has a condition which has worsened due to separation from the applicant. Because her assertion lacks corroborating evidence it does not carry as much weight. Furthermore, in the declaration on appeal [REDACTED] claims to be physically healthy. The AAO recognizes family separation causes emotional hardship, and we acknowledge that [REDACTED] has a close relationship with her husband and will experience emotional hardship if she remains in the United States without him. However, the emotional hardship that is a consequence of remaining in the United States without her husband has not been demonstrated to be “unusual or beyond that which is normally to be expected” from an applicant’s bar to admission. *See Hassan and Perez, supra*.

When the factors presented here, which factors are [REDACTED]’s mental and physical health conditions and her close relationship to her husband, are combined collectively, the AAO finds those factors combined fail to establish extreme hardship to [REDACTED] if she remains in the United States without her husband. Evidence such as medical records is needed to substantiate [REDACTED]’s claim of mental and physical conditions that have worsened due to separation from the applicant. [REDACTED] needs to demonstrate how remaining in the United States without the

applicant causes hardship that is “unusual or beyond that which would normally be expected” from an applicant’s bar to admission to the United States.

█ claims that she cannot live in Mexico because it will require, at the age of 77, adjusting to a new country while she is set in her ways. She states that she has lived her entire life in the United States and all of her family and friends are here and none are in Mexico. She asserts that she visited Mexico on vacation and knows that life there is hard. The AAO finds that the collective factors of █ age, her family ties to the United States, her employment as a housekeeper, her second grade education, her limited knowledge of Mexico, and her spending her entire life in the United States demonstrate that she would experience extreme hardship if she were to join her husband to live in Mexico.

The applicant established extreme hardship to his spouse if the were to join him to live in Mexico; however, he has not shown that she would experience extreme hardship if she were to remain in the United States without him. Thus, the factors presented in this case, when considered collectively, do constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act.

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), 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.