

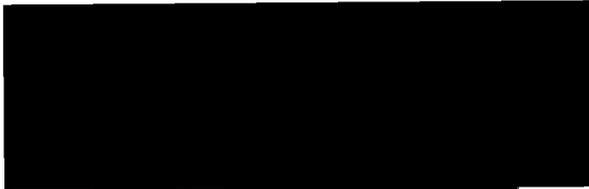
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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MAR 05 2010

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
CDJ 2004 680 022

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 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 a U.S. citizen, [REDACTED]. 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*, February 16, 2007. The applicant filed a timely appeal.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) refused to accept and consider documentary evidence submitted in support of the waiver application. He contends that USCIS has engaged in a discriminatory pattern of denying applications filed by women applicants, and failed to properly interpret and apply the law in the present case. Counsel claims that the director's decision contains limited facts, is deficient in particularities, cites to only a few cases, and states that children are not qualifying relatives even though the applicant and her husband have no children. Counsel contends that the decision inappropriately refers to case law that applies to persons seeking admission after deportation or arrest. Counsel avers that the applicant was denied due process and consideration was not accorded to [REDACTED]. He states that [REDACTED] hardship is not merely financial or due to separation, but is the cumulative effect of the hardship factors considered in their totality.

Counsel claims that [REDACTED] letter addresses mental, physical, and financial hardships. He maintains that the director failed to address [REDACTED]'s assertions that his "life, liberty, and pursuit of happiness are at stake," and that the loss of his wife would leave him "mentally crippled or deprived." Counsel contends that [REDACTED] was not interviewed at his wife's immigration interview and should have been. He states that the applicant has no criminal record and that [REDACTED] is working hard to pursue the American dream for his family and is continuing his education. Counsel requests that the waiver application be approved in view of the presented facts.

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.

....

USCIS records reflect that the applicant entered the United States without inspection in June 1992. She therefore began to accrue 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.

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 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).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including letters, and a copy of [REDACTED] high school diploma, and the naturalization certificate and lawful permanent resident card of his wife’s sisters.

Applying the *Cervantes-Gonzalez* factors here, 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 the applicant 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.

With regard to remaining in the United States without his wife, [REDACTED] claims in his letter dated February 10, 2005 that he requests the right to exercise the pursuit of happiness, which right is granted in the U.S. Constitution. He states that if his wife is not allowed to remain in the United States he would undergo extreme financial, physical and mental hardship, and would not be able to financially afford maintaining a relationship with her if she lived in Mexico. He argues that every family should be allowed to live together and that he cannot delay plans to have children due to his and his wife’s age. He conveys that he works full time and attends the University of Texas at Dallas and his educational goals may be put on hold due to stress caused by separation from his wife. He states that he must complete a bachelor’s degree to attain professional growth with his employer.

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).

[REDACTED] claim of financial hardship and of not being able to financially afford maintaining a relationship with his wife is not very persuasive in that he has provided no documentation such as his wage statements, income tax records, or invoices of his financial obligations to corroborate his financial hardship 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Although [REDACTED] claims that he will undergo physical and mental hardship

without his wife, he has not fully demonstrated the nature of those hardships. He has submitted no evidence on appeal showing that he had to discontinue his studies on account of stress caused by separation from his wife. Although the AAO recognizes that [REDACTED] will experience emotional hardship due to separation from his wife, he has not fully explained or shown how his hardship is “unusual or beyond that which would normally be expected” upon an applicant’s bar to admission to the United States.

In considering all of the hardship factors presented in the aggregate, which factors are financial and and physical hardship, the inability to maintain a relationship with his wife, and the possibility of not being able to continue his studies, we find that the combination of those factors fail to demonstrate extreme hardship to [REDACTED] if he remained in the United States without his spouse. The claim of financial hardship is not substantiated by documentation of income tax records, wage statements, or invoices of household expenses. He failed to fully explain the assertion of undergoing physical and mental hardship without his wife. On appeal he submitted no evidence showing that he had to discontinue his studies on account of stress caused by separation from his wife. While we do acknowledge that [REDACTED] will experience emotional hardship due to separation from his wife, he has not fully explained or shown how his hardship is “unusual or beyond that which would normally be expected” upon an applicant’s bar to admission to the United States. Based on the record, when the hardship factors are combined and considered collectively, they fail to establish that [REDACTED] will experience extreme hardship if he remains in the United States without his wife.

There is no claim made that [REDACTED] will experience extreme hardship if he joined his wife to live in Mexico.

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.

The AAO notes that even though the denial letter lacks specificity in addressing the applicant’s evidence, we concur with the denial of the wavier application. Furthermore, with regard to the case law that the director cites to and counsel’s claim that the cases are not relevant because they relate to persons seeking admission after deportation or arrest, we note that the cross application of standards is supported by the BIA. In *Matter of Cervantes-Gonzalez*, the BIA states that although it is “prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion.” (citation omitted). 22 I&N Dec. 560, 565 (BIA 1999). Moreover, in *In Re Monreal-Aguinaga*, a cancellation of removal case under section 240A(b) of the Act, the BIA states that “many of the factors that should be considered in assessing “exceptional and extremely unusual hardship” are essentially the same as those that have been considered for many years in assessing “extreme hardship,” but they must be weighed according to the higher standard required for cancellation of removal.” 23 I&N Dec. 56, 63 (BIA 2001).

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.