

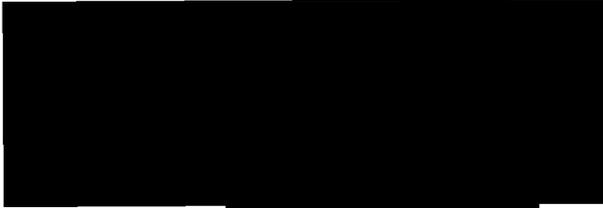
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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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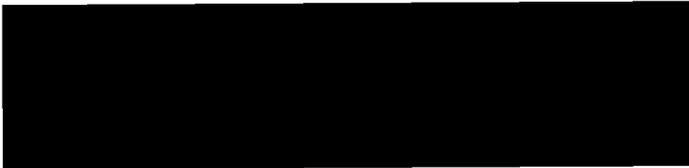
MAR 05 2010

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2005 513 025

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

In letters submitted on appeal, [REDACTED] asserts that she was in a car accident and learned that she has Bell's Palsy, a condition that paralyzes half of the face, making it difficult to talk or see. She claims to have a close relationship with her husband, with whom she has been with for five years, and wants to have children and needs him in the United States.

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 August 1997. He began to accrue unlawful presence from August 1997 until April 2000, 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 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). *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 invoices.

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 an applicant’s waiver request.

With regard to remaining in the United States without her husband, [REDACTED] contends that she needs financial assistance from her husband because she lost her job and is worried that she will lose their house and truck. She has submitted into the record invoices relating to her mortgage and vehicle and a transaction with HEB Food-Drugs. The applicant's letter dated April 16, 2006 is similar in content to his wife's letter. He indicates that he and his wife recently purchased their house and that he is needed to assist her in paying their financial obligations, which obligations total \$1,600 monthly. Although [REDACTED] has provided contact information to verify that she is no longer employed with Municipal Services Bureau, she has presented no documentation such as information from her local employment office demonstrating that she will be unable to obtain other employment.

[REDACTED] is concerned about separation from her husband due to her diagnosis of Bell's Palsy, her financial situation, and desire to start a family. 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 (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

While the AAO acknowledges that [REDACTED] will experience emotional hardship due to her concern about separation from her husband, her desire to start a family, and her diagnosis of Bell's Palsy, we find that her concerns do not carry full weight and are therefore less persuasive in that she has provided no medical records of her Bell's Palsy condition and has not explained how it will effect her daily life. She provided no evidence to show that she will be unable to become pregnant in the future if she delays starting a family. Furthermore, we find that [REDACTED] has not fully explained how her emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission. See *Hassan* and *Perez*, *supra*.

When all of the hardship factors are combined collectively, which factors are [REDACTED] concerns about meeting her financial expenses, her separation from her husband, the delay in starting a family, and having Bell's Palsy, the AAO finds that they fail to demonstrate extreme hardship to [REDACTED] if she remains in the United States without her husband. [REDACTED] has shown that she will experience some financial hardship because she lost her job and will no longer have the financial support of her husband. However, she has provided no documentation, such as from her local employment office, to prove that she will be unable to secure another job. She provided no medical records of the Bell's Palsy diagnosis and has not explained how the condition will impact her ability to function. While we recognize that [REDACTED] will undoubtedly experience emotional hardship due to separation from her husband, she has not explained how it 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, we find that when the hardship factors are combined, those factors fail

to establish that [REDACTED] will experience extreme hardship if she remains in the United States without her husband.

There is no claim made that [REDACTED] will experience extreme hardship if she were to join her husband to live in Mexico.

The factors presented in this case, when considered collectively, do not 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 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.