

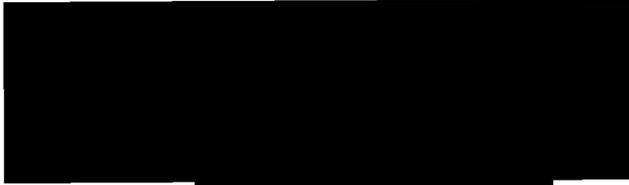
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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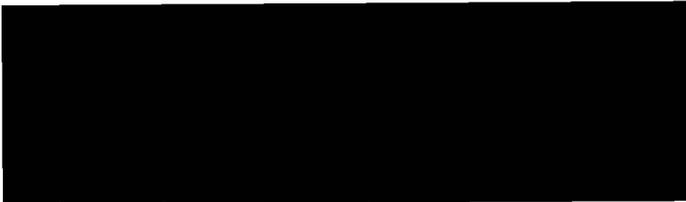
**MAR 05 2010**

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
CDJ 2004 715 321

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 [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*, March 20, 2007. The applicant filed a timely appeal.

On appeal, counsel contends that [REDACTED] and her husband have known each other for five years and have a close relationship. He conveys that they are financing a house together and own three cars. He claims that [REDACTED] relies on her husband for helping with their household and for emotional support. He states that since the applicant has been in Mexico, [REDACTED] has been concerned about her and her daughter's safety. Counsel asserts that [REDACTED] has trouble sleeping, sometimes gets depressed, and attended therapy sessions due to loss of sleep and depression. He conveys that [REDACTED] would not depart to Mexico because she has no job there, it is underdeveloped, and has increasing violence against U.S. citizens. He states that [REDACTED] will be deprived of the opportunity of starting a family if the waiver application is denied.

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 1988 and remained in the country until March 3, 2006. He therefore began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until March 3, 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 him 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.

The affidavit of [REDACTED] states the following. She has a close relationship with her husband and relies on him for emotional support. If she moved to Mexico she would lose everything she has worked for, she would have no place or job to go to, would not be able to afford an education for their daughter, and would leave behind her entire family in the United States. She has attended therapy due to loss of sleep and depression. She works to pay their bills.

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 to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

[REDACTED] claims that she has attended therapy due to depression and loss of sleep, and provides an invoice from [REDACTED] which invoice reflects service from November 2006 to January 2007, to corroborate her claim. However, the invoice appears to relate to thoracic and lumbar spine therapy rather than mental health treatment. Although [REDACTED] asserts that since the applicant left to Mexico she is concerned about his and her daughter's safety, no documentation has been presented to substantiate why they are unsafe. While the AAO acknowledges that [REDACTED] will have emotional hardship due to separation from her husband, we find that she has not fully demonstrated how her emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission.

In considering all of the hardship factors presented, which factors are the depression [REDACTED] feels due to separation from her husband and concern about her and her daughter's safety, the AAO finds that when those factors are combined they fail to demonstrate that she will experience extreme hardship if she remains in the United States without her husband. Although the AAO recognizes that [REDACTED] will experience emotional hardship on account of separation from her husband, we find that therapy provided by a chiropractor for the thoracic and lumbar spine differs significantly from therapy provided by a mental health professional for depression. Thus, without a detailed explanation by the chiropractor of [REDACTED] diagnosis and treatment, the AAO finds that the therapy sessions are not as persuasive in demonstrating the severity of [REDACTED] emotional hardship. [REDACTED] has not provided documentation in support of her assertion of feeling unsafe without the applicant. Lastly, she has not fully explained how her emotional hardship due to separation from her is unusual or beyond that which is normally to be expected from an applicant's bar to admission. When the combination of hardship factors is considered in the aggregate, they fail

to establish extreme hardship to [REDACTED] if she remained in the United States without her husband.

[REDACTED] declares that moving to Mexico means losing everything she has worked for, and having no place or job to go to. She asserted that she would not be able to afford an education for their daughter and would be separated from all of her family members in the United States. Counsel conveys that Mexico is an underdeveloped country that has increasing violence against U.S. citizens.

Although [REDACTED] states that she would have no place or job in Mexico, she has not explained why she would not live in the same place as her husband as he has been living in Mexico since March 2006. Furthermore, because no documentation has been furnished to corroborate the claims that the applicant and his wife would be unable to obtain employment in Mexico, that they would not be able to afford their daughter's education, and that they would live in unsafe area where [REDACTED] would be attacked, we find that the unsubstantiated claims carry less evidentiary weight in the hardship analysis. Although [REDACTED] will be separated from family members in the United States, she has not fully demonstrated how her emotional hardship due to this separation is unusual or beyond that which is normally to be expected from the denial of the waiver application. [REDACTED] has not addressed whether she would be able to visit her family in the United States. She has not fully explained why she would lose everything that she worked for in the United States as she has not addressed whether she would be able to sell the real estate and vehicles she owns, and whether it would result in a loss or a gain.

The factors presented in this case, which factors are [REDACTED] concerns about housing, employment, education, family separation, and loss of property, when combined and considered collectively, fail to show that [REDACTED] would endure extreme hardship as a result of living in Mexico with her husband. [REDACTED] has presented no documentation showing that they would be unable to obtain employment in Mexico and unable to afford to educate their daughter. She has not explained why she cannot live in the same place as her husband, who has been living in Mexico since March 2006, and why she would be unable to sell the property she acquired in the United States. No documentation has been presented to show that she would live in an unsafe area in Mexico. Finally, although we recognize that [REDACTED] will be separated from her family in the United States if she moves to Mexico, she has not fully explained how her emotional hardship due to family separation is unusual or beyond that which is normally to be expected from the denial of the waiver application. Thus, the applicant has not established that the combination of hardship factors demonstrate that his wife would experience extreme hardship if she joined him to live in Mexico.

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.