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U.S. Immigration and Citizenship Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAR 06 2010**  
CDJ 2004 786 369

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).

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 denied.

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 naturalized 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*, February 16, 2007. The applicant filed a timely appeal.

In the letter brief submitted on appeal, counsel contends that in addition to the normal hardship endured by [REDACTED] as a result of separation from her husband, she is also experiencing postpartum depression after the birth of her child, and will have long-term psychological damage if she remains separated from her husband.

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 May 1995. He therefore began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until March 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 the applicant’s naturalized 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.

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 in her letter dated March 12, 2007 that she needs the financial and emotional support of her husband. She

indicates that emotional stress of separation from her husband increased after the birth of her daughter. She conveys that her newborn's liver had difficulty removing bilirubin. [REDACTED] states that she is employed as a teacher and is having difficulty paying her bills and must find someone to take care of her children. She indicates that she takes medication for postpartum depression and is concerned about the medications side effects and its potential to impair her ability to take care of her children. She declares that she needs her husband to provide emotional support by monitoring her while she takes the medication, helping her take care of the children, ensuring her depression does not worsen. The submitted birth certificate reflects [REDACTED] daughter was born on November 13, 2006. The letter dated March 9, 2007 by [REDACTED]'s physician states that [REDACTED] has postpartum depression and is in need of her husband's emotional support. In her February 24, 2006 letter, [REDACTED] avers that she has been married to her husband since August 24, 2004 and that they have a U.S. citizen child who was born on March 20, 2004. In her letter dated March 5, 2006, [REDACTED] asserts that her daughter misses the applicant because he spent more time with their daughter.

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)).

In considering all of the hardship factors presented in the aggregate, which factors are [REDACTED] claim of having postpartum depression and needing the emotional support of her husband while she takes care of her children and receives treatment for postpartum depression, and her physician's corroboration of her condition, the AAO finds that the applicant has demonstrated that those combined factors demonstrate that his wife's emotional hardship is "unusual or beyond that which would normally be expected" upon an applicant's bar to admission to the United States. Thus, he has demonstrated that his wife will experience extreme emotional hardship if she remains in the United States without him.

With regard to joining her husband to live in Mexico, [REDACTED] claims that if she and her daughter lived in Mexico it will be very hard for them because they will have difficulty with the Spanish language and because her daughter will have better opportunities raised and educated in the United States. The record indicates that [REDACTED] is a native of Mexico and a naturalized citizen of the United States. She therefore needs to demonstrate why she would have difficulty with the Spanish language. Furthermore, given the age of her daughter, who was born on March 20, 2004, it is unclear that she would have great difficulty adjusting to the native language of her parents. [REDACTED] has not demonstrated why she would experience extreme hardship if her daughter was raised in Mexico rather than the United States. When the combined hardship factors are considered in their totality, the AAO finds that they fail to demonstrate that [REDACTED] will experience extreme emotional hardship if she were to join her husband to live in Mexico.

The applicant has shown extreme hardship to his spouse if she remained in the United States without him. However, he has not demonstrated extreme hardship if she joined him 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.

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.