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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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U.S. Citizenship
and Immigration
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h/b

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAR 10 2010**
CDJ 2005 576 368

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:

SELF-REPRESENTED

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 son of a lawful permanent resident mother, [REDACTED] and the stepson of a U.S. citizen, [REDACTED]

[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.

On appeal, the applicant asserts that he was a minor when he entered the United States unlawfully. He states that his father currently supports both him in Ciudad Juarez, Mexico and other family members in the United States. He claims that separation has been extremely difficult for his family, especially for his mother, who worries about his welfare and safety. He contends that his family did not know that the original petition that was filed did not include all of his mother's children.

The letter submitted on appeal by [REDACTED] conveys that his stepson crossed the river in April 2001 when he was 16 years old in order to be with his family. He contends that his son is at risk living in Ciudad Juarez, a dangerous city where he was attacked on two occasions. The first time the delinquents sought to steal his stepson's cell phone and threatened him with a knife, and the second time they threatened him with a pistol. [REDACTED] asserts that his wife is worried about her son's safety in Ciudad Juarez.

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.

....

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in August 2000. He turned 18 years old on December 7, 2001. He therefore began to accrue unlawful presence from December 7, 2001, the date on which he turned 18 years old, until August 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 are the applicant’s U.S. citizen stepfather and his lawful permanent resident mother. 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. However, the AAO notes that the record contains two letters by the applicant’s mother that do not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

In that the letters are written completely in Spanish and have no translation, the letters will carry no weight in this proceeding.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s parents must be established in the event that they remain in the United States without the applicant, and alternatively, if they join 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 letter by the applicant’s stepfather dated April 18, 2007 indicates that the applicant has a close relationship with his family members. The letter by the applicant’s family members that is dated April 10, 2006 declares that the applicant’s stepfather is a substitute teacher at Gadsden Independent School District, that his mother is paid minimum wage working at a manufacturing company, and that it is difficult for them to support their son in Ciudad Juarez while also supporting their family in the United States. The letter indicates that the applicant attended a community college in the United States since 2003, and was a good student. The letter claims that separation from the applicant has been difficult because they have never been separated before, and that they have no means of contacting the applicant and worry that something may happen to him. The letter by [REDACTED], a student services specialist with Dona Ana Branch Community College of New Mexico State University, conveys that the applicant attended a community college since fall 2003, earning 30 college credits while achieving a 3.7 grade point average. [REDACTED] indicates that the applicant’s family has limited income and the applicant’s father attends school. The certificate in the record reflects that the applicant is a centennial scholar at his community college.

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).

Although the applicant's parents contend that it is difficult to financially support themselves and the applicant, their contention carries less weight because there is no documentation of their income and financial obligations, such as wage statements, income tax records, and invoices of the household expenses, to demonstrate their financial hardship. Furthermore, no documentation has been provided to show that the applicant is unable to obtain employment or continue his studies in Mexico. 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).

Even though the applicant's parents express concern about their son's living in Ciudad Juarez, they have not addressed with any specificity why he must live in Ciudad Juarez rather than another city in Mexico. Nor have they addressed whether they have relatives in Mexico with whom he can stay. The applicant's parents are concerned about separation from their son. The AAO is mindful of and sympathetic to the emotional hardship caused by family separation. However, they have not fully demonstrated how their emotional hardship in remaining in the United States without their son is unusual or beyond that which is normally to be expected from an applicant's bar to admission. See *Hassan and Perez, supra*.

In considering all of the hardship factors in the aggregate, which factors are financial and emotional hardship to the applicant's parents, we find that the combination of those factors fail to establish extreme hardship to the applicant's parents. The claim of financial hardship is not corroborated by documentation of the income and expenses of the applicant's parents and the applicant has not demonstrated that he is unable to obtain employment in Mexico. The applicant has not shown why he is unable to continue his studies in Mexico, why he must live in Ciudad Juarez instead of elsewhere, and whether he has other relatives in Mexico with whom he can live. While the AAO recognizes that the applicant's parents will experience emotional hardship due to separation from their son, they have not fully explained how their 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, the AAO finds that when the hardship factors are combined and considered collectively, they fail to establish that the applicant's parents will experience extreme hardship if they remain in the United States without him.

There is no claim made that the applicant's parents will experience extreme hardship if they were to join their son 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.