

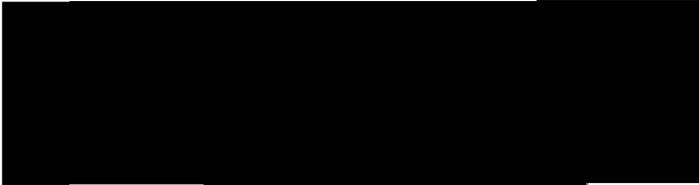
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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**MAR 22 2010**

FILE: [Redacted]  
CDJ 2003 662 021

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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 dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 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*, dated January 12, 2007. The applicant filed a timely appeal.

On appeal, counsel asserts that the evidence on appeal of statements by [REDACTED] family members and friends show that he will suffer extreme hardship if leaves the United States to join his wife in Mexico. Counsel states that [REDACTED] has lived in the United States since his adolescence and would experience extreme hardship if separated from his U.S. citizen brother, three U.S. citizen daughters from a prior marriage, and two U.S. citizen children from his current marriage. Counsel avers that [REDACTED] will be unable to financially support his daughter in college because he would be unable to find a job in Mexico. Counsel claims that [REDACTED] parents, two brothers, and two sisters reside in Los Reyes, Michoacan, Mexico, and that they depend on him financially. Counsel states that [REDACTED] parents are 86 years old, his father is bedridden, and his mother has Alzheimer's disease. Counsel claims that [REDACTED] has financial obligations of: a house, cars, college tuition, and providing medication for his parents. Counsel states that [REDACTED] earns over \$50,000 annually and it would be difficult for him to find a comparable job in Mexico, given its economic condition. Counsel asserts that the World Bank indicates that 53 percent of Mexico's population lives in poverty and unemployment in Mexico is realistically estimated at 40 percent. Counsel contends that [REDACTED] has been employed in construction for over 20 years, and has completed courses and earned certificates in his field of industrial pipefitting and that his accomplishments will be useless in Mexico. Counsel avers that [REDACTED]'s health has deteriorated since his wife left the United States: he has high cholesterol and borderline diabetes and was prescribed medication for his conditions. According to counsel, [REDACTED] has extreme anxiety and depression without his wife and children, and his family in the United States is concerned about him because he lost weight. Counsel maintains that [REDACTED] must remain in the United States to support his wife and children even though he is worried about them in Mexico. Counsel asserts that family reunification is a key factor in our immigration laws.

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 accrued unlawful presence from the date of her entry without inspection into the United States in January 2000 until January 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. 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 naturalized citizen husband. 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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The factors 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.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine 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.

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 the applicant’s waiver request.

With regard to remaining in the United States without the applicant, the affidavit by [REDACTED] conveys that it has been devastating for him to be without his wife and children. He asserts that he must remain in the United States for employment and that he cannot bring his four-year-old daughter to the United States because she would be separated from her mother and two-year-old brother. He avers that he has lived in the United States all of his adult life and has daughters and grandchildren here. He states that he worries about his wife and children in Mexico, has high cholesterol and borderline diabetes, and feels stressed and depressed since they went to Mexico. He asserts that it is difficult for him to concentrate at work, and his job requires 100 percent concentration because he could lose his life. The record contains letters from [REDACTED] family members and friends, which letters collectively convey that separation from his wife and young children is making [REDACTED] depressed. The record contains documents relating to the occupation of industrial pipefitter: transcripts, certificates, and a letter from the National Center for Construction Education and Research. The letter by [REDACTED] with [REDACTED], dated May 18, 2006, conveys that they are committed to safety and that [REDACTED] has been working safely. The letter by [REDACTED] Porche reflects that [REDACTED] has been employed with [REDACTED] as a pipefitter since August 7, 2006, and that he earns \$21.50 per hour. Medical records show that [REDACTED] was prescribed Zetia in August 2006.

Family separation must be considered in determining hardship. *See, e.g., 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). In *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)).

The AAO acknowledges that [REDACTED] affidavit and the letters from his family members and friends indicate that he has experienced emotional hardship due to separation from his wife and children. [REDACTED] indicates that his safety is jeopardized at work because it is difficult for him to concentrate at work. The transcripts show that an industrial pipefitter requires knowledge of advanced pipe fabrication, rigging, and stress relieving and aligning, and the letter by [REDACTED] former employer conveys the importance of job safety. Based on the inherent safety risks involved in the occupation of an industrial pipefitter, which risks include working on high pressure and temperature applications, and in view of [REDACTED] statement that he is jeopardizing his life because he cannot fully concentrate in performing his duties, we find that he has demonstrated that the hardship factors in the aggregate establish that if he remains in the United States without his wife his emotional hardship “is unusual or beyond that which is normally to be expected” from an applicant’s bar to admission.

With regard to joining his wife to live in Mexico, counsel declares that [REDACTED] will be unable to obtain employment and his achievements as an industrial pipefitter will be useless. Counsel avers that [REDACTED] has financial obligations and he refers to a newsletter dated May 19, 2006, to show that [REDACTED] will not find a job in Mexico that pays his present salary. Even though counsel contends that the newsletter demonstrates that [REDACTED] will not find employment in Mexico due to its economic condition, we find that the newsletter does not address in any depth economic conditions to establish that [REDACTED] or his wife will be unable to find employment and will live in poverty as a consequence. No documentation has been submitted to show that [REDACTED] will be unable to obtain employment as a pipefitter or will be unable to support his family on a pipefitter’s salary. [REDACTED] has not demonstrated that his brother in the United States would be unable to provide financial support to their parents, and he has not furnished documentation of his financial support to his daughter in college. Although [REDACTED] has a close relationship with his brother and daughters in the United States, he has not fully demonstrated how any emotional hardship due to separating from them to live in Mexico, “is unusual or beyond that which is normally to be expected” from an applicant’s bar to admission.

When the factors of relocation are considered collectively, which factors are [REDACTED] concern about obtaining employment in Mexico, his financial obligations to his daughters and parents and his wife and children in Mexico, and separation from his family members in the United States, we find that the record fails to demonstrate that they will result in extreme hardship to [REDACTED]. The record is inadequate to show that [REDACTED] will be unable to obtain employment in Mexico and that his salary will be insufficient to support his family. Furthermore, the record lacks evidence to show that he must provide financial assistance to his parents and his daughter or that he would be forced to sell his house at a substantial loss. Thus, the applicant has not established that the combination of hardship factors demonstrate that her husband would experience extreme hardship if he joined her 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.