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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  
and Immigration  
Services

*H6*

**MAR 22 2010**

FILE:

CDJ 2002 808 250

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE:

Applicant:

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).

*Michael Shumway*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), 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] who is 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 OIC 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 Officer in Charge*, February 16, 2007. The applicant filed a timely appeal.

On appeal, [REDACTED] asserts that he needs his wife and child in the United States. He contends that he is missing the best years of his son's life and needs to take care of his family.

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 2001 and remained in the country until November 2004. She therefore began to accrue unlawful presence from 2001, the date of her entry, until November 2004, 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 U.S. 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. However, the record contains letters 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 there are letters that are written completely in Spanish and have no translation, those letters will carry no weight in this proceeding.

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, in a letter dated July 25, 2007, [REDACTED] indicates that it has been approximately four years since the applicant left the United States and he cannot stand being away from his family. He conveys that he wants to buy a house for his wife and provide to his U.S. citizen son the father figure and education he deserves. [REDACTED] asserts that his wife has no immediate family members in Mexico to support her. In an undated letter [REDACTED] states that his son is not doing well in Mexico and his teacher said he needs to be taken to a psychologist. He conveys that separation is financially burdening because he pays his expenses as well as expenses of his wife and son. The record shows that [REDACTED] son was born on March 20, 2002. Undated letters by [REDACTED] state that he drove [REDACTED] to Mexico because [REDACTED] cannot afford an airplane ticket. Undated letters by [REDACTED], [REDACTED] sister, convey that [REDACTED] is depressed because of: separation from his wife and son, his son's behavioral problems at school, his concern about crime in Mexico, and his wife and son living alone and without any other immediate family members. The letter, dated March 7, 2007, by the office manager of [REDACTED] conveys that [REDACTED] is employed full time, earning \$5.50 per hour. The record contains money transfers from [REDACTED] to his wife.

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 (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). 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).

[REDACTED] has indicated that he is financially burdened in supporting two households and he submitted into the record an employment letter, money transfers, and letters from his friend who gives him car rides to Mexico. The AAO acknowledges that the record demonstrates that [REDACTED] has experienced some financial hardship because of separation. However, his claim of financial hardship carries less weight in that he has not submitted documentation of all of his expenses such as payments for his and his wife's utilities, telephone, and rent. Such documentation is needed to demonstrate that [REDACTED] income is not enough to meet his monthly financial obligations.

█ claims that he is depressed because of separation from his wife and son; and is concerned about his son's behavioral problems, the crime in Mexico, and his wife and son living alone and without other family members. █ concern about his wife and son's well-being will carry weight in the hardship determination. However, the evidentiary weight is diminished in that he submitted no documentation from a school official or teacher corroborating his son's behavioral problems or substantiating that his wife and son live in an unsafe area in Mexico. Furthermore, █ has not addressed why his son is not living with him in the United States. Although the AAO acknowledges that █ has had emotional hardship due to separation from his wife and child, we find that he has not fully demonstrated how his emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission.

The hardship factors presented here are the depression █ has experienced since his wife and son left the United States, his concern about their well-being in Mexico and his son's behavioral problems in school, and his financial hardship. Although █ provided documentation showing his salary of \$5.50 and his money transfers to his wife, he needs to provide evidence of all of his and his wife's expenses to show that his income is not enough to support two households. █ indicates that he is concerned about his son's behavioral problems at school and his family's safety in Mexico, but he failed to submit corroborating documentation of his son's behavioral problems and documentation showing that his family lives in an unsafe area in Mexico. While the AAO recognizes that █ has experienced emotional hardship due to separation from his wife and son, he has not fully demonstrated how his emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission and why his son is not living with him in the United States. When the combination of hardship factors is considered in the aggregate, the AAO finds they fail to establish extreme hardship to █ if he remained in the United States without his wife.

There is no claim made of extreme hardship to █ if he joined his wife 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.