

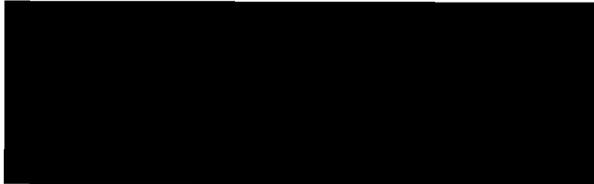
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



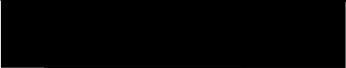
U.S. Citizenship  
and Immigration  
Services

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MAY 03 2010

FILE:   
CDJ 2004 806 079

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).

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 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, December 26, 2006.* The applicant filed a timely appeal.

On appeal, [REDACTED] asserts that he needs his wife in the United States. He contends that Mexico is not his country and that he and his wife belong in the United States. He claims that he cannot think, do anything, or work in peace without his wife and is taking medication for depression.

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 July 1996 and remained in the country until January 2006. She therefore began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, 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 ██████████, 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-Moralez*, 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 a letter by the applicant and ██████████ that does 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 letter is written completely in Spanish and has no translation, the letter 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 January 17, 2007, ██████████ states that he has two children who are 19 and 14 years old. He indicates that he has a close relationship with the applicant, with whom he planned to buy a house and open a restaurant. He asserts that after the denial of his wife's waiver he was prescribed venlafaxine by his doctor for depression. ██████████ conveys that although he joined his wife in Mexico and is happy with her, he does not speak Spanish well, cannot work, and misses his family in the United States. He indicates that on September 11, 2005 he and his wife had a marital problem because she told him she was leaving and he called the police to prevent her from doing so. The letter by ██████████, Mr. ██████████, prior wife, and ██████████ dated January 17, 2007, conveys that the applicant has been deeply depressed and has lost 80 pounds since the applicant left the United States. The note by ██████████ physician, dated January 17, 2007, conveys that ██████████ has been treated for depression, anxiety syndrome, TBP, overweight, and gastritis. The assessment dated January 8, 2007 by his physician reflects that ██████████ used to make valves and completed his Graduate Education Diploma. ██████████ submitted a ledger reflecting that he consistently paid his rent late since June 7, 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)).

██████████ conveys that he had depression due to separation from his wife and the note from his physician confirms he received treatment for depression. The assessment by his physician shows that he had moderate to severe depression approximately four months after the applicant left the United States. The record reflects that ██████████ was consistently late in paying his rent after his wife left the United States and his former spouse states that he has been in a deep depression since the applicant left the United States. Although ██████████ left the United States to live with his spouse in Mexico in January 2007, he returned to live in the United States in the early 2007, because he

stated that he felt that Mexico was not his country. In view of [REDACTED] depression, which was confirmed by his physician and his former spouse, the AAO finds that 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, [REDACTED] declares that Mexico is not his country and that he belongs in the United States. [REDACTED] indicates that he does not speak Spanish well, he cannot work in Mexico, and he misses his family in the United States. However, he does not explain why he cannot obtain employment in Mexico or provide any evidence of being unable to obtain employment. Furthermore, he does not claim that his wife is unable to obtain work.

The factors asserted in this case are [REDACTED] concern about not speaking Spanish well, his not being able to work in Mexico, and his separation from family members in the United States. [REDACTED] conveys that he is happy in Mexico, although he misses his family members in the United States. He has not fully addressed how his emotional hardship due to family separation is unusual or beyond that which is normally to be expected from an applicant’s bar to admission to the United States. [REDACTED] has not provided any documentation in support of his claim that he will be unable to obtain employment in Mexico, and he has not addressed whether his wife is able to secure employment in Mexico. 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.

The applicant has demonstrated extreme hardship to her husband if he were to remain in the United States without her. However, she has not shown that he would experience extreme hardship if he were to join 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.