

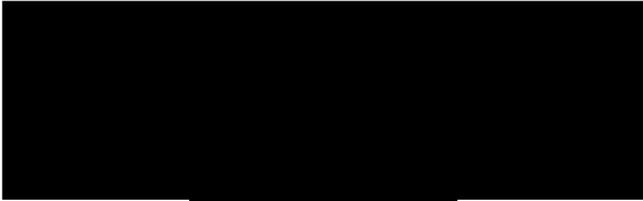
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
CDJ 2004 824 620

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

**MAY 17 2010**

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:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 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 a U.S. citizen. 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. The applicant filed a timely appeal.

On appeal, counsel states that the director erred by failing to consider the totality of the evidence, which demonstrates the extreme hardship of the applicant's wife. Counsel contends that the applicant has been married to the applicant since 1999, and although his spouse had a miscarriage in 2004, they still hope to have children. Counsel declares that the applicant's husband was born and raised in the United States, and that his entire extended family lives here. Counsel states that the applicant's spouse has been employed as a bilingual teacher for over four years and is considered an integral part of her community. Counsel maintains that the applicant's spouse needs two incomes to meet monthly expenses. Counsel states that the applicant's wife is both a full-time teacher and the manager of her husband's small business, which has debt. Counsel indicates that the applicant's spouse is stressed because her house was burglarized.

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 August 1996 and remained until September 2006. He therefore began to accrue unlawful presence from August 1996 until September 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, 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 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). 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).

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 him 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.

The record contains medical records, letters, invoices, photographs, a warranty deed with vendor's lien, and other documents.

With regard to the applicant's spouse remaining in the United States without him, the applicant states in the letter dated November 24, 2007 that his wife is having financial difficulties. The applicant's wife indicates that she has a close relationship with her husband, even though the first three years of their marriage were difficult. She conveys that she is having financial difficulties and is concerned about her health and her house's burglary. We note that the record contains invoices; however, it lacks documentation of the applicant's spouse's income. In the absence of evidence of her income, the applicant cannot demonstrate that his wife's income is insufficient to meet her monthly financial obligations.

Family separation must be considered in the hardship assessment. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. The Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* at 1293. In *Yong v. INS*, 459 F.2d 1004 (9th Cir. 1972), the Ninth Circuit reversed a BIA decision denying an application for suspension of deportation, noting that "[s]eparation from one's spouse entails substantially more than economic hardship." *Id.* at 1005.

The hardship factors asserted here is the financial and emotional hardship as a result of separation from the applicant. In view of the substantial weight that is given to family separation in the hardship analysis, and in light of the significant emotional impact that the applicant's wife indicates that separation from the applicant, with whom she lived for seven years before he left the United States, has had on her, we find the applicant has demonstrated that the hardship that his wife will experience as a result of separation is extreme.

With regard to joining the applicant to live in Mexico, the applicant indicates that his wife will need to sell their house and every thing they own. He states that his wife only knows Mexico as a tourist and will have problems adjusting to its climate, pollution, and food. He asserts that she will no longer have the health benefits or income from teaching that she has in the United States. The applicant, however, has provided no evidence to show that in Mexico his wife will be unable to obtain employment as a teacher, or in another occupation for which she is qualified, that will provide an adequate salary to live on and health care benefits that are similar to what she now receives. We note that the applicant's spouse states that the applicant graduated from a technical school in communications in Mexico. No documentation has been presented to establish that the applicant will be unable to obtain employment with a sufficient income to support his wife.

The hardship factors asserted here are loss of health care benefits and a reduced income. The applicant has not shown that he and his wife will be unable to obtain employment that will provide a sufficient income in which to live and health care benefits that are similar to what his wife now receives. The AAO acknowledges that the applicant's spouse will experience difficulty adjusting to

a new culture and environment and will be separated from extended family members in the United States. Nevertheless, the applicant has not fully demonstrated how his wife's adjustment to life in Mexico and separation from extended family members will result in extreme hardship. When the combination of hardship factors is considered in the aggregate, the AAO finds they fail to establish extreme hardship to the applicant's spouse if she joined him to live in Mexico.

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.