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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 19 2010

FILE: [REDACTED]  
CDJ 2004 800 520

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:

SELF-REPRESENTED

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 lawful permanent resident 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. The applicant filed a timely appeal.

On appeal, the applicant's husband asserts in a letter that his wife and children are in Mexico and after years of separation his family needs to be together in the United States as he is distressed and depressed without them. He conveys that he is worried about his family's well-being.

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 on August 18, 2000 and remained in the country until her departure in September 2001. She therefore began to accrue unlawful presence from August 18, 2000 until September 2001, when she left the country and triggered the ten-year bar. Pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant is inadmissible to the United States until September 1, 2010.

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 unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s lawful permanent resident 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 a letter 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.

The letter that is written completely in Spanish and has no translation will carry no weight in this proceeding.

Extreme hardship to the applicant's husband must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins her 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 applicant's husband states in the letter on appeal that he has been separated from his wife and children since 2001 and is distressed and depressed without them. Family separation must be considered in determining hardship. 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 stated that "the most important single hardship factor may be the separation of the alien from family living in the United States" and that there must be a careful appraisal of "the impact that deportation would have on children and families." *Id.* at 1293. Furthermore, the Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* 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. Similarly, the Third Circuit in *Bastidas v. INS*, 609 F.2d 101 (3rd Cir.1979) explicitly stressed the importance to be given the factor of separation of parent and child.

The hardship factors asserted here is the depression of the applicant's spouse as a result of family separation. 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 husband indicates that he will continue to experience due to separation from his spouse, we find the applicant has demonstrated that the hardship that her husband will experience as a result of separation is extreme.

However, there is no claim made of extreme hardship to the applicant's husband if he joined his wife to live in Mexico. Therefore, the applicant has not demonstrated that her spouse will experience extreme hardship if the application is denied.

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.