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U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NORFOLK, VIRGINIA

Date: FEB 19 2008

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Norfolk, Virginia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Venezuela 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 and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his U.S. citizen wife and permanent resident father.

The field office director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated February 15, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife, step daughter, sister, and father will suffer hardship should the present waiver application be denied, and thus the applicant has shown eligibility for a waiver of inadmissibility. *Statement from Counsel on Form I-290B*, dated March 16, 2006.

The record contains statements from counsel; statements from the applicant's wife, father, sister, stepdaughter, mother- and father-in-law, and wife's relatives; a copy of the applicant's passport; a copy of the applicant's mother's death certificate; a copy of a school record for the applicant's stepdaughter; copies of medical reports for the applicant's wife's parents; letters reflecting the applicant's and his wife's involvement with their church; a letter regarding the applicant's wife's participation in English language classes; tax, employment, and bank records for the applicant and his wife; a copy of the applicant's birth certificate; a copy of the applicant's wife's U.S. passport; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate, and; news articles regarding conditions in Venezuela. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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.

....

(v) Waiver. – The Attorney General [now the Secretary of 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.

In the present matter, the record indicates that the applicant was admitted to the United States on August 28, 1995 in B-2 status. The applicant was authorized to remain until February 27, 1996, yet he did not depart within the authorized period. On November 15, 2004, he filed a Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant departed the United States on January 19, 2005. Accordingly, the applicant accrued unlawful presence in the United States from April 1, 1997, the date the unlawful presence provisions were enacted, until November 15, 2004, the date he filed his Form I-485 application. This period totals over seven years. The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, the applicant's wife stated that she and the applicant's 15-year-old stepdaughter would experience extreme hardship if the applicant is prohibited from remaining in the United States, as they would be compelled to relocate to Venezuela where conditions are unsafe. *Statement from Applicant's Wife*, at 1, dated March 16, 2006. The applicant's wife expressed her concern that Venezuela is a dangerous country where human rights are not respected and crime and government violations are common. *Id.* She stated that she does not wish to subject her daughter to such conditions. *Id.*

The applicant's wife explained that the economy in Venezuela is poor, wages are low, and daily necessities are expensive. *Id.* The applicant's wife stated that the applicant does not have immediate relatives in

Venezuela, thus they would not have a place to live. *Id.* Conversely, she stated that she and the applicant own an estate in Puerto Rico, and they have a house under construction. *Id.*

The applicant's wife stated that the applicant's stepdaughter is performing well in school, and that her studies and ambitions would be disrupted should she relocate to Venezuela. *Id.* She indicated that the education system in Venezuela lacks compared to the United States. *Id.* at 2.

The applicant's wife explained that she and the applicant are close with their other family members, and that the family will experience emotional hardship should the applicant and his wife relocate to Venezuela. *Id.* She indicated that family members would worry about the fact that she and the applicant's step daughter would be at risk as Americans in Venezuela. *Id.* The applicant's wife stated that her parents' health would be affected due to the emotional difficulty, possibly jeopardizing their lives. *Id.*

The applicant's wife further expressed that she is very close with the applicant, and that she would endure significant emotional hardship if she is compelled to live apart from him. *First Statement from the Applicant's Wife*, dated September 26, 2005. She explained that she lost her first husband through an unexpected death. *Id.* She stated that she does not wish to be separated from her spouse again, and that she would be affected deeply both emotionally and psychologically. *Id.* The record contains a death certificate for the applicant's wife's former husband that reflects that he died on December 21, 2002 at the age of 38 while he was married to the applicant's wife. *Death Certificate of [REDACTED]* dated December 27, 2002.

The applicant's father stated that he has always been close with the applicant, and that the applicant's wife and step daughter have become a part of his family. *Statement from Applicant's Father*, dated March 15, 2006. He indicated that Venezuela has a high level of insecurity and lack of prosperity, and thus he would not consider returning there or support his children doing so. *Id.*

The applicant's wife's parents stated that they do not support the applicant's wife relocating to Venezuela due to unsafe conditions there. *Statement from the Applicant's Wife's Parents*, dated March 6, 2006. They provided that they have delicate health, and that the applicant's wife, as the oldest daughter, often assists them. *Id.* They expressed concern that the applicant's wife would be unable to visit them due to the insecurity in Venezuela. *Id.*

The applicant's stepdaughter stated that she has fear and sorrow regarding the prospect of relocating to Venezuela. *Statement from Applicant's Step Daughter*, dated September 26, 2005. She explained that her natural father died, and that the applicant "is [her] support" now, including helping her with her homework and the English language. *Id.*

The record contains letters reflecting that the applicant's wife is active with her church, she has employment in the United States, and she takes English language classes.

Upon review, the AAO first notes that the field office director made an erroneous statement of the applicable law. Specifically, the field office director indicated that U.S. Citizenship and Immigration Services (USCIS) must determine whether "denial of admission would result in extreme hardship to the United States citizen or

lawfully resident spouse, son or daughter.” *Decision of the Field Office Director* at 2. However, as noted above, in the present proceeding, section 212(a)(9)(B)(v) of the Act provides that qualifying relatives are the applicant’s U.S. citizen or lawful permanent resident spouse, and his U.S. citizen or lawful permanent resident parent or parents. Hardship to the applicant’s children or stepchildren is not a direct concern, as they are not qualifying relatives. Section 212(a)(9)(B)(v) of the Act. Accordingly, the field office director’s analysis of hardship to the applicant’s stepdaughter is not relevant to the applicant’s eligibility for a waiver. Further, the applicant claims that his father is a lawful permanent resident, yet the field office director did not address hardship to the applicant’s father.

Counsel indicated that the applicant is responding on appeal to concerns raised by the field office director. *Statement from Counsel on Form I-290B* at 1. However, as the field office director made an erroneous statement of the applicable law, the applicant was not properly informed of the legal standard he must meet in order to establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Specifically, the applicant was not informed that hardship to his permanent resident father can serve as a basis for eligibility. The field office director suggested that hardship to the applicant’s stepdaughter may serve as a basis for eligibility, when in fact the applicant’s step daughter is not a qualifying relative under section 212(a)(9)(B)(v) of the Act. However, the record contains sufficient evidence to show by a preponderance of the evidence that the applicant’s wife will experience extreme hardship if the present waiver application is denied.

The applicant has submitted sufficient evidence to show that his wife would experience extreme hardship should the applicant be compelled to depart the United States and she remain. The applicant’s wife explained that she is close with the applicant and that enduring separation would create substantial emotional hardship. The record reflects that the applicant’s wife’s previous husband died at age 38. The applicant’s wife expressed that she does not wish to experience losing the companionship of her spouse again by having the applicant depart the United States without her. The AAO finds the fact that the applicant’s wife was widowed in 2002 to be an unusual circumstance. It is reasonable that the applicant’s wife’s widowhood would significantly increase the emotional hardship she would endure if separated from the applicant beyond that which would ordinarily be experienced by the relatives of those deemed inadmissible.

The record further reflects that the applicant’s stepdaughter would experience emotional hardship should she be separated from the applicant. Hardship to an applicant’s child is not a direct concern in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant’s child or stepchild, it is reasonable to expect that the child’s emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. The applicant’s wife’s emotional hardship will be compounded should her daughter lose the daily presence of the applicant after her daughter previously lost her natural father.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife would experience extreme hardship should she remain in the United States without the applicant.

The applicant has submitted sufficient evidence to show that his wife would experience extreme hardship should she relocate to Venezuela. The applicant's wife has significant ties to relatives and her community in the United States, including her parents, her church community, and other relatives. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. However, all hardships must be considered in aggregate, and the AAO gives due consideration to hardship the applicant's wife would experience due to separation from her family members and community.

The applicant's wife's parents indicate that the applicant's wife assists them emotionally and economically. The applicant provided letters from his mother- and father-in-law's physician to reflect that they suffer from medical conditions such as Hypertension, Diabetes, artery disease, and Glaucoma. However, the record lacks detailed information to reflect the level and frequency of assistance the applicant's wife provides for them. Thus, the applicant has not shown that his mother- and father-in-law in fact depend on his wife. Yet, it is understood that the applicant's wife would experience emotional hardship due to relocating further away from her parents, limiting her opportunity to see them and assist them.

The applicant's 15-year-old stepdaughter performs well in school, and the applicant's wife indicated that her daughter has further education and employment ambitions in the United States. As noted above, direct hardship to the applicant's stepdaughter is not a consideration in proceedings under section 212(a)(9)(B)(v) of the Act. Yet, it is acknowledged that the applicant's wife would endure additional emotional hardship should she share in her daughter's experience of losing access to the U.S. education system and having to adapt to school in Venezuela at a critical time in her education.

As asserted by counsel, conditions in Venezuela are not favorable, and the applicant's wife would likely face challenges in safety, security, and employment. The applicant provided numerous articles regarding instability in Venezuela. Additionally, the U.S. Department of State issued a report documenting human rights conditions in Venezuela in which it was determined that Venezuela had problems including politicization of the judiciary, harassment of the media, and harassment of the political opposition. *U.S. Department of State, 2006 Country Reports on Human Rights Practices, Venezuela*, March 6, 2007. The report further noted that the following human rights problems were documented: unlawful killings; disappearances reportedly involving security forces; torture and abuse of detainees; harsh prison conditions; arbitrary arrests and detentions; a corrupt, inefficient, and politicized judicial system characterized by trial delays, impunity, and violations of due process; illegal wiretapping and searches of private homes; official intimidation and attacks on the independent media; widespread corruption at all levels of government; violence against women; trafficking in persons; and restrictions on workers' right of association. *Id.*

The U.S. Department of State further issued the following advisory on November 1, 2007:

Violent crime in Venezuela is pervasive, both in the capital, Caracas, and in the interior. The country has one of the highest per-capita murder rates in the world. Armed robberies take place in broad daylight throughout the city, including areas generally presumed safe and frequented by tourists. A common technique is to choke the victim into unconsciousness and then rob them of all they are carrying. Well-armed criminal gangs operate with impunity, often setting up fake police checkpoints. Kidnapping is a particularly serious problem, with more than 1,000 reported during the past year alone. According to press reports at least 45 foreigners have been kidnapped in the first eight months of 2007. Investigation of all crime is haphazard and ineffective. In the case of high-profile killings, the authorities quickly round up suspects, but rarely produce evidence linking these individuals to the crime. Only a very small percentage of criminals are tried and convicted.

U.S. Department of State, Bureau of Consular Affairs, Country Specific Information, Venezuela (November 1, 2007) <http://travel.state.gov/travel/cis_pa_tw/cis/cis_1059.html>.

Accordingly, the applicant's wife's concern regarding her safety and the safety of her 15-year-old daughter are warranted.

Considering all elements of hardship in aggregate, the applicant has submitted sufficient evidence to show that his wife would experience extreme hardship should she relocate to Venezuela.

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant remained in the United States beyond his approved stay in B-2 status, in violation of the laws of the United States.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, stepdaughter, mother-in-law, father-in-law, and sister; the applicant is involved in his community through a religious organization; the applicant participates in the care of his stepdaughter, including assisting her with her studies and mastery of the English language; the applicant attempted to take measures to legalize his immigration in the United

States, including applying for adjustment of status and obtaining advanced parole before departing the country, and; the record does not reflect that the applicant has committed further violations of U.S. law.

Although the applicant's immigration violation cannot be condoned, the positive factors in this case outweigh the single negative factor.

In proceedings for an 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. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.