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[REDACTED]

FILE:

[REDACTED]

Office: MEXICO CITY, MEXICO  
(PANAMA CITY, PANAMA)

Date: FEB 20 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 District Director, Mexico City, Mexico. 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 ten years of his last departure from the United States. The applicant has a U.S. citizen spouse and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *Decision of the District Director*, dated January 22, 2007.

On appeal, counsel asserts that the district director abused his discretion, did not consider the applicant's spouse's bi-polar condition, and the circumstances behind the applicant's last entry without inspection were not fully and properly considered and weighed. *Form I-290B*, received February 26, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, a psychosocial evaluation of the applicant's daughter, a statement relating to the applicant's spouse's bipolar disorder, a letter from the applicant's spouse's health care provider, a letter from the applicant's daughter's counselor, the applicant's daughter's statement and information on bi-polar disorder. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in or around June 2001 and departed the United States on March 11, 2006. The applicant accrued unlawful presence from June 2001, the date he entered the United States without inspection, until March 11, 2006, the date of his departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his 2006 departure.

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.

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 an applicant. Hardship to an applicant's child is not a permissible consideration in a 212(a)(9)(B)(v) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Venezuela or in the event that she remains in the United States as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to show extreme hardship to his spouse in the event of relocation to Venezuela. The record reflects that the applicant's spouse was born in the Dominican Republic and has resided in the United States since 1989. *Applicant's Spouse's Form G-325A*, dated May 28, 2004. There is no indication that the applicant's spouse has any ties or has ever resided in Venezuela. The record includes a statement that reflects that the applicant's spouse has been diagnosed with Bipolar Disorder Type II and depression, requires three psychotropic medications and has been receiving outpatient/inpatient services since November 10, 2003. *Letter from Park Place Behavioral Center Treatment Coordinator*, dated May 11, 2006. The record reflects that bipolar type II depression is highly associated with suicide risk. *University of Maryland Medical Center Report on Bipolar Disorder*, at 1, undated.

The applicant's spouse states that she has two adult daughters whom she cannot imagine leaving behind and she states that the applicant's father, mother, brother and sister are in the United States. *Applicant's Spouse's Third Statement*, at 2, dated February 20, 2007. The applicant's spouse states that she would have to sell her house at a loss and she has a good job which she would lose. *Id.* The applicant's spouse states that her

fifteen-year old daughter has a learning deficiency, she undergoes special schooling and she would lose her insurance provided by Healthy Kids if she moved to Venezuela. *Supra.* at 1-2. The record reflects that the applicant's spouse's daughter is in a private, residential school for children with mild to moderate behavior and emotional problems, and it would be detrimental to her progress to remove her from the program. *Family Care Counselor Letter*, at 1, dated February 7, 2007. The applicant's spouse asks how she can bring her daughter to a country where she'll likely face extreme hardship. *Applicant's Spouse's Third Statement*, at 2. Considering the applicant's spouse's loss of her ongoing, established relationship with her medical provider, the serious nature of her disorder, the difficulty she would face in relocating her daughter to Venezuela, her complete lack of ties to Venezuela and her family ties to the United States, the AAO finds that she would experience extreme hardship upon residing in Venezuela.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she has been diagnosed with bi-polar disorder, separation has aggravated her condition and the denial of the applicant's case has made her feel totally depressed. *Applicant's Spouse's Third Statement*, at 1. As mentioned previously, the record reflects that bipolar type II depression is highly associated with suicide risk. *University of Maryland Medical Center Report on Bipolar Disorder*, at 1, undated. The applicant's spouse states that she cannot contemplate living without the applicant. *Applicant's Spouse's Third Statement*, at 3.

The applicant's spouse states that the applicant's economic contributions previously allowed her to pay for her medication co-payment and that she cannot now afford her medication, and she would lose her health insurance. *Id.* at 1. The applicant's spouse states that she cannot afford her house payments, car payments, utilities, etc. without the applicant. *Applicant's Spouse's First Statement*, at 1, undated. The applicant's spouse states that her telephone service has been disconnected and she has to borrow money from her retirement plan to keep up with the bills. *Applicant's Spouse's Second Statement*, dated July 6, 2006. The AAO notes that the record does not include substantiating evidence of the applicant's spouse's financial hardship claims. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

However, considering the applicant's spouse's statement that she cannot contemplate living without the applicant in combination with the high suicide risk associated with her bipolar type II depression, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a

permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors include the applicant's entry without inspection and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse, stepchild, sister and lawful permanent resident father, mother and brother; the lack of a criminal record; extreme hardship to the applicant's spouse; and statements attesting to the applicant's good character.

The AAO finds that the violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.