



U.S. Citizenship
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FILE:



Office:

MEXICO CITY, MEXICO
(PANAMA CITY)

Date: JUL 29 2008

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:



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.

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 application will be approved.

The record reflects that the applicant is a native and citizen of Venezuela who, on or about May 7, 2005, made an application for a "K-1" nonimmigrant visa as the fiancé of a U.S. citizen (Form I-129F, Petition for Alien Fiancé). In connection with the application for a K-1 nonimmigrant visa, the district director determined that the applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The district director found that that the applicant failed to establish that refusal of her admission would result in extreme hardship to her U.S. citizen fiancé and denied the waiver application accordingly. *Decision of the District Director*, dated March 22, 2006.

In support of the appeal, counsel submits the following, inter alia: a legal brief, dated May 15, 2006; birth documentation relating to the applicant's U.S. citizen fiancé and two children; an affidavit from the applicant's fiancé, dated May 14, 2006; copies of photographs of the applicant and her family; copies of airplane tickets documenting the applicant's fiancé's travels to Venezuela to visit the applicant; school records regarding the applicant's oldest child; financial documentation relating to the applicant and her fiancé; documentation regarding the applicant's fiancé's medical and mental health; documentation relating to the applicant's fiancé's business; a letter from the applicant's fiancé's U.S. citizen sibling; copies of phone bills between the applicant's fiancé and his family; and documentation relating to the applicant and her fiancé's wedding plans. The entire record was reviewed and considered in rendering this decision.

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

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 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 U.S. citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the (Secretary) that the refusal of admission to such

immigrant would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

8 U.S.C. § 1182(a)(9)(B). In the present application, the record indicates that the applicant was admitted to the United States on a B2 nonimmigrant visa on September 12, 1998, authorized to remain for six months. The applicant did not depart the United States until August 16, 2002. The applicant accrued unlawful presence from March 13, 1999 until August 16, 2002. The applicant is now seeking admission within 10 years of her 2002 departure from the United States. The applicant is, therefore, 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. The inadmissibility determination of the district director is affirmed.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's fiancé is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's fiancé.

Counsel first asserts that the applicant's U.S. citizen fiancé is experiencing emotional and psychological hardship due to the applicant's inadmissibility. As stated by the applicant's fiancé,

...She [the applicant] had our first baby daughter, [REDACTED] on August 10, 1995 in Puerto Rico. Although she returned to Venezuela, she had to return in January 1996 because our daughter was having health problems.... I also was extremely attached to her and wanted to spend all the time with her.... It was unbearable for me to watch her leave every time they had to return to Venezuela. Because our daughter was very young, she needed her mother....

...in 2002, my daughter was 7 years old at that time and she suffered extremely to be separated from me. She even blames me for her being unable to return to Puerto Rico because she cannot understand that I am doing everything I can to have her and my fiancé come to Puerto Rico.... It destroys me emotionally to see how rebellious and blameful she has become even though she is only 10 years old....

In June 19, 2004, [redacted] [the applicant] has our second baby daughter, [redacted], in Venezuela. My baby daughter has trouble recognizing me because I cannot travel as often as I would like to be able to see her....

...On September 28, 2005, we went to the scheduled interview and my fiancé's visa was denied. After the interview, I had to take my older daughter, [redacted] to the doctor because she could not stop crying and the desperation extremely affected her.... It is unbearable for me to see her crying...

I am suffering an extreme hardship having my fiancé and my daughters away from me....

My oldest daughter...is very depressed because she longs to live in Puerto Rico with me and her mother and her sister....

She hardly enjoys her childhood because she is always locked up in the house because we fear that she may be kidnapped because the neighbors know that she is a US citizen and I have U.S. dollars. There is no security in Venezuela for a woman and two girls....

My youngest daughter...is suffering from acute 'laringo-traqueitis' and requires a specialized medical treatment. Although she has a pediatrician in Venezuela who, maybe because of lack of recourses, has not been able to treat her adequately, my daughter still hasn't shown any improvement. I have health insurance in Puerto Rico and experienced doctors with better technology....

It extremely surprised and disappointed me when a U.S. government officer told me that I could take my two U.S. citizen daughters to Puerto Rico to get their medical care. They are girls and need their mother. Even for simple things like bathing, they need their mother and not a man to bathe them. They have been raised by their mother, and although they very much want to live with me in Puerto Rico, they could never part from the care and attention their mother provides them. **I am out working all day to be able to support them.** My daughters need their two parents and they deserve a normal childhood....

...My fiancé and I need each other. Our daughters need us both.... They deserve to have the best medical treatments available for their health problems. They deserve to have a good education and to grow strong, mentally and emotionally. I am able to provide everything for them and for my fiancé in Puerto Rico where I have a successful business, a house, great doctors, great schools, and a wonderful loving family awaiting for them. I have suffered too long not being able to wake up every morning next to my loving fiancé; not being able to take my daughters to school every day and to see them grow; not being able to share every moment with the family I have always wanted to have....

I have trouble sleeping. Every time my daughter calls me I cry. I cannot sleep at night thinking of the problems I face when I send them money because of the currency.... I have had to visit a psychiatrist...to help deal with the depression....

Emotionally, it would break...heart to have my fiancé so far from me, and my two daughters continue to be raised so far away from me. I will be depressed, anxious, and crying all the time missing them. I will be worried all the time about their well being. I know that the condition in Venezuela is very bad and unsafe for U.S. citizens. I will be in fear all the time about where they are, if they are fine, if they have money, if they are suffering, and I know that it will emotionally tear me down....

Letter from [REDACTED], dated May 16, 2006.

Documentation regarding the applicant's fiancé's medical and mental health concerns has been provided to substantiate the claims made above. In addition, a letter in support is provided by [REDACTED], the applicant's fiancé's U.S. citizen sibling. As [REDACTED] states,

...My family and I are very concern to see my brother [the applicant's fiancé]...suffering so much. We fear that he may have an emotional crisis. He is always stress and extremely anxious with all this situation.... He told me that his days are unbearable and it is very difficult to have his fiancé and two daughters away from him. We also fear that his health can prejudice since he suffers from diabetes and high blood pressure and it is a dangerous combination....

He is deeply sad and depressed and he is not a young man and he cannot endure living so far from his fiancé and their two U.S. citizen daughters. He had an extremely difficult and painful separation from his former wife. He suffered so much during the many years they were separated before they decided to get the divorce. During that time, his good friend, and now fiancé, [REDACTED] [the applicant], was his support....

Letter from [REDACTED], dated April 24, 2006.

The U.S. Department of State, in its Country Specific Information-Venezuela, states the following, in pertinent part,

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. 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.

Travel to and from Maiquetía Airport, the international airport serving Caracas, can be dangerous and corruption at the airport itself is rampant. Travelers at the airport have been victims of personal property theft, as well as mugging and “express kidnapping” in which individuals are taken to make purchases or to withdraw as much money as possible from ATMs, often at gunpoint. The Embassy has received multiple, credible reports that individuals with what appear to be official uniforms or other credentials are involved in facilitating or perpetrating these crimes. For this reason, American citizen travelers should be wary of all strangers, even those in official uniform or carrying official identification. There are also known drug trafficking groups working from the airport. Travelers should not accept packages from anyone and should keep their luggage with them at all times.

Country Specific Information-Venezuela, U.S. Department of State, dated May 5, 2008.

Based on the turmoil in Venezuela, as confirmed by the U.S. Department of State, the applicant’s fiancé’s documented medical and mental health issues, his fears and anxieties with respect to his fiancé’s and his children’s safety and well-being, in light of his oldest daughter’s problems at school and his youngest daughter’s medical situation, and the applicant’s fiancé’s awareness that the children need to be with their mother and that their hardship were they to be separated from their mother to reside in Puerto Rico with him would cause him, as their father, extreme hardship, the AAO finds that the hardship the applicant’s U.S. citizen fiancé faces due to the applicant’s inadmissibility goes significantly beyond that normally suffered upon the temporary separation of families.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen fiancé asserts the following regarding the hardships he would face were he to relocate to Venezuela:

...Since I was born in Orocovis, Puerto Rico, U.S.A., on March 29, 1953, I have always lived in the United States. I am the owner and president of a company in Puerto Rico, [REDACTED] Auto Glass, Inc., that I manage. I have 3 U.S. citizen employees that I supervise. I have a lease on the property where I have the company's principal office. I own two properties in Puerto Rico, and I have finished to remodel, paint, and decorate the house in Toa Baja, Puerto Rico, where I plan to live with my future wife and our two U.S. citizen daughters. I also have two other U.S. citizen children from my former marriage.... I am very close to them, and they depend on me for their support, because my older son works with me in the company, and the younger one is currently studying at the University of Puerto Rico and I pay for his education. I am also very close to my U.S. citizen father, [REDACTED], who is 86 years old, lives in Bayamon, Puerto Rico, and is very sick. I help him financially, and I also take care of him, especially when he has to be hospitalized. I am also very close to my twelve siblings. All of them live in Puerto Rico, which is one of the reasons why I cannot move to Venezuela....

...I cannot move to Venezuela because I have a company, and many obligations to fulfill in Venezuela. In Venezuela, the unemployment rate is extremely high even for the natives. It is worst when you are foreigner, and even more if you are U.S. citizen. I have two mortgages to pay. The bank will seize our houses if I am unable to continue with the company earning money to pay them. My sons, father, and siblings will be devastated and depressed. They will suffer greatly.

Supra at 3, 5.

Documentation regarding the applicant's fiancé's business has been provided. Moreover, a letter has been submitted by [REDACTED], Accountant, [REDACTED] Auto Glass, Inc. As Mr. [REDACTED] asserts,

...The corporation is dedicated to the sales and repair of cars' glasses....

[REDACTED] Auto Glass Inc. success is in the image of its main stockholder, Mr. [REDACTED] [the applicant's fiancé]. Mr. [REDACTED] has been in this industry for 36 years, which has gained him experience and acknowledgement. His reputation as an expert in this area demands his intervention with many commercial clients locally and internationally....

It is an indisputable fact that the marketing strategies of [REDACTED] Auto Glass Inc. revolve around Mr. [REDACTED]'s image. For this reason, to considerate (sic) that Mr.

■■■■■ moves from Puerto Rico and allows his sons to continue administering ■■■■■ Auto Glass Inc. puts the community of the business at risk. This comment is based on the experiences lived when Mr. ■■■■ has been abroad for months. During those trips, dramatic sales downfalls and mistakes in buying and inventory management have been experienced. In numerical terms, we are talking about downfalls that surpass the (50%) fifty percent. This is because his sons have not acquired the experience needed for the business management....

As accountant of the corporation I have told Mr. ■■■■ my total opposition to his abandoning the administration of the corporation to go live in Venezuela with his daughters. The decision would be devastating and puts at risk the economic health of the business, which is the only economic resource of Mr. ■■■■ and his sons in Puerto Rico and his daughters in Venezuela.... If there is no resource for income, the economic stability of Mr. ■■■■■ will fall tremendously and at his age is not easy to start in another job....

Letter from ■■■■■, Accountant, dated May 3, 2006.

Based on the concerns outlined above with respect to the problematic country conditions in Venezuela, the professional disruption that the applicant's fiancé would face were he to relocate to Venezuela, financial hardship relating to the potential loss of his business and emotional hardship due to separation from his family in Puerto Rico, the AAO concludes that the applicant's fiancé would face hardship beyond that normally expected of one facing relocation abroad based on the inadmissibility of a fiancé.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen fiancé would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen fiancé would suffer extreme hardship were he to relocate to Venezuela to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen fiancé and children would face if the applicant were to remain in Venezuela, regardless of whether the applicant's fiancé relocates or remains in the United States, the U.S. citizenship of the applicant's fiancé's family members, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are periods of unauthorized presence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's fiancé as a result of her inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.