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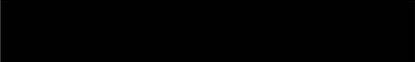
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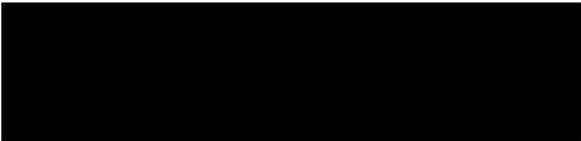
IN RE:



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 District Director, Mexico City, denied the waiver application. The decision is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED] is a native and citizen of Columbia 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 seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The district director denied the waiver application, finding that the applicant failed to establish extreme hardship to a qualifying relative. The district director also stated that the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), as an alien previously removed from the United States. *Decision of the District Director, dated May 4, 2006.*

The record reflects the following. The applicant entered the United States in May 1996 as a B-2 visitor, with authorization to remain in the United States for a temporary period not to exceed November 26, 1996. In September 1996, the applicant filed an application for asylum. On February 20, 1997 the application was referred to an immigration judge. In a decision dated June 26, 1997, the immigration judge denied her applications for asylum and withholding of deportation, and granted voluntary departure until July 28, 1997. On March 13, 2002, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. On September 12, 2002, the BIA denied the applicant's motion to reopen. The applicant was to be removed from the United States to Columbia on January 15, 2003 from Miami, Florida, and the applicant was informed that for a period of 10 years from the date of her departure from the United States she would be prohibited from entering, attempting to enter, or being in the United States. The applicant did not report, as requested, for deportation. On March 23, 2004, the applicant was encountered during a routine traffic stop, was taken into custody and was removed from the United States on April 26, 2004.

The AAO finds that the applicant is inadmissible under sections 212(a)(9)(A)(ii)(I) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I) and 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The statute at section 212(a)(9) reads as follows:

(A) Certain aliens previously removed

(i) Arriving aliens

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal . . . ) is inadmissible.

(ii) Other aliens

Any alien not described in clause (i) who –

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(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.

(v) Waiver

The Attorney General 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 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. No court shall

have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record establishes that the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), as an alien seeking admission within 10 years after being ordered removed from the United States under section 240 of the Act. The Attorney General may consent to an alien's reapplying for admission. 212(a)(9)(A)(iii). That consent is granted as a matter of discretion through the filing of a Form I-212, Application for Permission to Reapply for Admission (Form I-212).

The record shows the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. *See Matter of Rodarte*, 23 I&N Dec. 905 BIA 2006) (departure triggers bar because purpose of bar is to punish recidivists).

In the current case, the district director was correct in finding the applicant was unlawfully present in the United States for more than one year. Prior to the end of her authorized stay in the United States the applicant filed an application for asylum, which was denied on June 26, 1997. She began to accrue unlawful presence as of the date of the final denial of the asylum application including the judicial review by the immigration judge and the BIA. *Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043)*. She therefore accrued unlawful presence from September 12, 2002, the date of the final BIA decision, and the date of her removal on April 26, 2004, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B) of the Act, which provides the following:

- (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.

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<sup>1</sup> Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii).

<sup>2</sup> DOS Cable, *supra*.; and *IIRIRA Wire #26, HQIRT 50/5.12*.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, who must be the applicant's U.S. citizen or lawfully resident spouse or parent. Hardship to an applicant's child is not a consideration under the statute; and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B) of the Act. The hardship to an applicant's child is considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's naturalized citizen spouse.

"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 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. The BIA indicated that these factors relate to the applicant's "qualifying relative." *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).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he remains in the United States without the applicant, and in the alternative, that he joins the applicant to live in Columbia. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel states that [REDACTED] has diabetes and depression. She states that the applicant assists her husband with his diet and medication and provides emotional support. She states that since Mr. [REDACTED] separated from his wife his emotional and physical state have declined. Counsel indicates that the applicant has provided care and emotional support to her in-laws. She states that the applicant's mother-in-law is disabled on account of two strokes and that the applicant and her husband provide financial assistance to her in-laws. Counsel indicates that the applicant's husband would not be able to live in Columbia because he would not have medical treatment for diabetes, and would not be able to obtain a job as he has not lived in Columbia for 30 years. She conveyed that [REDACTED], who is 49 years old, would have difficulties adjusting to life in Columbia and would be depressed there because he would not have a stable income and decent life. Counsel states that the applicant is a second mother to the children of her

husband and is a grandmother to her husband's grandchildren. According to counsel, [REDACTED] loses income when he travels to visit his wife in Columbia.

The letter dated June 22, 2006 by [REDACTED] conveyed that his son has been depressed since the applicant's deportation. He stated that the applicant ensured that his son, who is diabetic, had a proper diet and followed his medicine regimen. He stated that the applicant and his son lived with them, and that he and his wife have medical problems and the applicant helped with cooking, cleaning, and making sure they took their medicine. He indicated that the applicant provided emotional support to his wife, who lost the full use of her right arm and hand and has speech difficulties because of two strokes. He stated that his wife can no longer care for herself or her house as she did before the strokes and is dependent upon others, particularly the applicant.

The June 20, 2006 letter by the property manager with Ing Real Estate Investment Management conveyed that the applicant's husband has been an employee of Pin Oak Estates for two and one half years and that he has taken vacation time and unpaid time, which is \$368 of lost income, to be with his wife.

The record contains a document reflecting check account transactions and invoices relating to telephone calls.

The letter by the applicant conveyed that she resides in Bogota, Columbia, because she is afraid of living in Cali, Columbia, where she is originally from. She stated that she has no job in Columbia and is supported by her husband, and that he calls her every day.

The August 16, 2005 letter by the applicant's husband indicated that the applicant has provided assistance to his parents and has influenced the lives of his children by advising and encouraging them. She conveyed that she has a close relationship with her step-children and that they need her. He stated that the applicant helped him by cooking, making sure he followed a proper diet, ensuring that he takes his medication, getting his blood sugar checked and providing the records to his doctor. He conveyed that he is depressed without his wife and has twice traveled to Columbia to be with her.

The AAO notes that the record reflects that the applicant is employed as a watch repairer with El Taller in Bogata, Columbia. *Application for Immigrant Visa and Alien Registration*.

The AAO has considered all of the evidence in the record in rendering this decision.

The applicant's husband indicates that he has diabetes and that his wife assists with his dietary needs and his medication. However, there is no documentation in the record of the health problems of the applicant's husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th

Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9<sup>th</sup> Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9<sup>th</sup> Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The applicant’s husband conveyed that he is depressed about separation from his wife and her separation from his children and parents. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

The applicant’s husband claims he will experience financial hardship if he remained in the United States without the applicant because of the expense and lost income associated with travel to Columbia. But there is no documentation in the record of the applicant’s income or household expenses to establish that he would not be able to afford to travel to Columbia. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, the record reflects that the applicant is employed in Columbia as a watch repairer.

The AAO finds that the applicant’s father-in-law’s statement, which is that he and his wife require assistance and emotional support from the applicant, is not persuasive in establishing extreme hardship to the applicant’s husband. There is no documentation in the record of the health problems of the applicant’s in-laws. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, the applicant has not sufficiently established that any hardship to her in-laws would result in extreme hardship to her husband.

Counsel asserts that the applicant’s husband would not be able to obtain employment in Columbia. However, no evidence reflects that the applicant’s husband has any physical or mental impairment which would restrict his employment or limit the type of employment he could perform in Columbia. No unique reasons have been presented as why the applicant’s husband will be unable to find employment in Columbia. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Furthermore, a claim of difficulty in finding employment and

inability to find employment in one's trade or profession, although a relevant factor, is not sufficient to justify a grant of relief in the absence of other substantial equities. *Matter of Piltch*, 21 I&N Dec. 627, 631 (BIA 1996). And "[g]eneral economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

Counsel asserts that the applicant's husband would not have access to treatment for diabetes in Columbia. No documentation, however, has been provided in support of this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

According to counsel, the applicant's husband would have difficulties adjusting to life in Columbia. The AAO recognizes that the adjustment to the culture and environment in Columbia would be difficult for the applicant's husband, but these difficulties will be mitigated by the moral support of the applicant and her family members, which are applicant's husband's family ties to Columbia.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not constitute extreme hardship to the applicant's husband in the event that he were to remain in the United States without the applicant and if he were to join her in Columbia. Thus, extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), has not been established.

Having found the applicant statutorily ineligible for relief, no purpose would be 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 proving eligibility 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 director's May 4, 2006 decision is affirmed. The application is denied.