



U.S. Citizenship
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FILE: [Redacted] Office: PANAMA Date: JUN 20 2006
(AAO 05 053 50007)

IN RE: [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:
[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge, Panama, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States. The applicant is the spouse of a U.S. citizen. She 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), in order to reside in the United States with her spouse.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated November 19, 2004.

The record reflects that, on September 10, 2003, a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse, was approved. The record shows that the applicant appeared at the U.S. Embassy in Bogota, Colombia, on May 11, 2004. The applicant testified that, on February 24, 2000, she was admitted to the United States as a B-2 nonimmigrant until August 23, 2000. The applicant filed an Application to Extend Nonimmigrant Status (Form I-539) which was approved, granting the applicant an extension of stay until December 23, 2000. The applicant remained in the United States until April 19, 2004, when she returned to Colombia in order to attend her immigrant visa interview.

On July 14, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse is experiencing extreme hardship due to the denial of the applicant's waiver and absence from the United States. *Brief In Support of Appeal*, dated December 16, 2004. In support of her contentions, counsel submitted the above-referenced brief, a new affidavit from the applicant's spouse, medical documentation in regard to the applicant's spouse, a psychological report for the applicant's spouse, medical reports on the applicant's spouses' condition, documents evidencing the applicant's spouse's financial support of the applicant in Colombia, ownership documents for the applicant's spouse's house in the United States and country condition reports for Colombia. 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.

The acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's unlawful presence in the United States for more than one year. Counsel does not contest the acting officer in charge's determination of inadmissibility.

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 herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. The applicant's spouse's mother is not a qualifying relative. Thus, hardship suffered by the applicant's spouse's mother will be considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record reflects that the applicant's husband, [REDACTED] is a U.S. citizen by birth. Mr. [REDACTED] mother, [REDACTED], has multiple medical conditions and resides in the immediate vicinity of Mr. [REDACTED] who provides financial assistance to her. The record reflects further that the

applicant and Mr. [REDACTED] are in their 50's and Mr. [REDACTED] has been diagnosed with sarcoidosis and is a recovering alcoholic.

Counsel and Mr. [REDACTED] contend that Mr. [REDACTED] would suffer extreme financial and emotional hardship whether he remained in the United States without the applicant or traveled to Colombia in order to reside with the applicant. Mr. [REDACTED] has been working for Wellesley College for over 15 years. The applicant and Mr. [REDACTED] claim no marketable job skills. Mr. [REDACTED] is a recovering alcoholic who has attended Alcoholics Anonymous meetings and has been admitted to a number of alcoholic recovery programs, the most recent of which occurred in October 2000, with the support of the applicant. Mr. [REDACTED] also suffers from cutaneous sarcoid, for which he receives treatment in which the applicant's support plays an important role since its development is stress-based. Counsel has submitted medical documentation to show that, while Mr. [REDACTED] condition is currently non-life threatening, it is an illness which is exacerbated by stress and can become life-threatening. The psychological report indicates that Mr. [REDACTED] has previously been treated for alcoholism and depression, and that, since the applicant's absence from the United States, he has suffered a full-blown episode of Major Depression with symptoms of Generalized Anxiety Disorder, which will likely cause Mr. [REDACTED] drinking and suicidal tendencies to increase. The psychological letter indicates that all of Mr. [REDACTED] family members have had alcohol dependency issues and psychological problems. Counsel submits medical documentation that shows Mr. [REDACTED] mother suffers from and is being treated for diabetes, Alzheimer's, osteoporosis, hypertension and has a pacemaker. The psychological evaluation and Mr. [REDACTED] affidavit indicates that the applicant used to provide care to [REDACTED] and that, since Mr. [REDACTED] has had to send money to the applicant in Colombia due to her inability to find employment, he has been unable to render as much financial assistance to [REDACTED] and the applicant are concerned that if he relocated to Colombia to avoid separation from the applicant, he would be unable to obtain sufficient employment to support the family owing to the economy, his age and his lack of marketable job skills. Moreover, Mr. [REDACTED] and the applicant are concerned that he would be unable to obtain sufficient treatment for his conditions and he would lose his retirement benefits which will be payable in the next five years. The psychological report indicates that if Mr. [REDACTED] moved to Colombia and suffered the loss of his family in the United States, his job and pension and the home which he owns in the United States, it would be sufficient to trigger another severe episode of Major Depression which would also put him at risk for increased alcohol abuse or suicide. The country conditions on the record indicate that 55% of the population in Colombia lives in poverty, and the unemployment rate is at 14.5%.

The applicant and Mr. [REDACTED] prospects, even with Mr. [REDACTED]'s experience, for adequate employment in Colombia are somewhat dim. If he remained in the United States, Mr. [REDACTED] would face trying to combat his own health and psychological problems which would be exacerbated by the applicant's absence. It would be extremely difficult for Mr. [REDACTED] to mitigate the effects of separation by visiting the applicant, due to impact of the applicant's absence on his medical and psychological conditions. Although Mr. [REDACTED] is skilled, in Colombia, where wages are generally lower and the unemployment rate is high, these skills would be undermined and he and his family could be reduced to poverty, compounded by his significant health and psychological conditions. Mr. [REDACTED] has no immediate family in Colombia and he has significant family ties in the United States, including his U.S. citizen mother who suffers from a number of ailments. The economic hardships Mr. [REDACTED] face are not uncommon to alien and families upon deportation. However, the hardship Mr. [REDACTED] faces is substantially greater than that which aliens and families upon deportation would normally face when combined with his history of medical and psychological problems. A finding of extreme

psychological, physical and financial hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship Mr. [REDACTED] would face in either the United States or Colombia if his wife were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States for which she seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's husband if she were refused admission, her otherwise clean background, the significant ailments of the applicant's U.S. citizen mother and the applicant's spouse's significant ties to the United States.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when 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.