U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 05 2013 Office: PANAMA CITY, PANAMA FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of grounds of inadmissibility was denied by the Field Office Director, Panama City, Panama. 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 Colombia 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 again seeking admission within 10 years of the date of the applicant's departure. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, in order to return to the United States to reside with her U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen spouse, the qualifying relative. The Field Office Director denied the application accordingly. *Decision of Field Office Director,* dated August 24, 2012.

On appeal, counsel submits a brief, hardship statements from the applicant, the applicant's husband and their children, additional financial documents, medical documents, employment records for the applicant's husband, telephone records, school records for the applicant's children, reports on country conditions in Colombia and copies of previously submitted evidence. The record also includes, but is not limited to, additional hardship statements from the applicant and her husband, support letters, additional financial records, copies of birth and marriage certificates, a psychoemotional and family dynamics assessment, the applicant's husband's divorce decree, health insurance records for the family, banking records, travel records, electronic mail messages and family photographs.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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 [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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

On her Form I-601, the applicant stated that she entered the United States as a nonimmigrant visitor in November 1998 and resided in this country beyond her period of authorized stay until her departure in August 2007. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. Inadmissibility is not contested on appeal.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's qualifying relative for a waiver of this ground of inadmissibility is her U.S. citizen spouse. 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession,

separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The record shows that the applicant's spouse would suffer extreme hardship if he were to relocate to Colombia to reside with the applicant. Regarding emotional hardship, the relevant evidence establishes that the applicant's husband is the father of one child, age 15, from a prior marriage for

whom he shares custody with his ex-wife in the United States. The applicant's husband's divorce judgment submitted on appeal awarded joint custody of his son to him and his former wife and ordered that the child's domicile and residence could not be changed from New York State without prior court approval. A notarized letter from the former spouse of the applicant's husband states that she does not give parental consent for the applicant's husband to relocate to Colombia with their son. In addition to his son and other immediate family members, the record further establishes that the applicant's husband has considerable ties in the United States, including his job with his current employer, his home in New York and residence in the United States for more than 20 years since the age of 21.

On appeal, the applicant's husband also expresses his concerns about the level of crime in Colombia, the personal safety of his family there and his inability to financially support them upon relocation. He further states that the applicant has not been able to find suitable employment in Cali and he would also be unable to find adequate employment given his age and the weak economy in Colombia. The record contains media articles and government reports on current country conditions in Colombia which indicate that the applicant's husband would face significant difficulties finding employment and maintaining his and his family's personal safety in Colombia given Colombia's high rates of unemployment and poverty, as well as the significant violence in Colombia related to narco-terrorism and other criminal activities. In particular, the record documents a high rate of violent homicides in Cali, where the applicant currently resides.

On appeal, counsel submits a detailed and probative psychoemotional assessment from a licensed mental health counselor which indicates that contributing factors to the applicant's husband's anxiety and depression are his fear of being separated from his son and other significant ties in the United States, his anticipated inability to financially support his family upon relocation and his serious concerns regarding his and his family's personal safety in Colombia. The relevant evidence, when considered in the aggregate, demonstrates that the applicant's spouse would suffer extreme hardship upon relocation to Colombia.

The record also shows that the applicant's spouse is suffering extreme hardship while separated from the applicant. On appeal, the applicant's husband explains that he is struggling to pay for the costs of separation in addition to his other financial responsibilities in the United States. The record documents the applicant's spouse's income and expenses and shows that his expenditures are exceeding his income. The relevant evidence shows that the applicant's husband must pay court-ordered alimony to his former spouse each month, that he sends monthly payments to support the applicant and her children in Colombia, and that he has additional costs of separation such as telephone charges, airline tickets for visits, and medical bills and private insurance for his wife in Colombia incurred because she is not covered by his employer-sponsored health insurance in the United States as she was prior to their separation. On appeal, the applicant's husband explains that he has been working seven days a week since November 2011 and had to withdraw some of his retirement funds in order to meet his financial responsibilities in the United States and Colombia. On appeal, counsel submits evidence that the applicant's spouse is in danger of losing his home in foreclosure proceedings and that he withdrew over half of his retirement savings in July 2012. Both the applicant and her husband attest that the applicant has been unable to find

employment in Colombia and is unable to help financially support the family. In sum, the relevant evidence demonstrates that separation has placed severe financial strains upon the applicant's husband.

The mental health counselor's probative assessment submitted on appeal also supports the applicant's husband's claims regarding the emotional and psychological toll that separation has caused him. Based on an in-depth interview and psychological testing, the counselor diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood and reported that his score on the Global Assessment of Functioning (GAF) indicated severe symptoms and that his scores on anxiety and depression inventories corresponded to the severe ranges of those classifications. The assessment discussed how the applicant's immigration problems and the resultant separation of the couple were psychosocial stressors and the major contributing factors to the applicant's husband's mental health conditions.

When considered in the aggregate, the emotional and financial hardships of relocation and separation in this case are extreme. The applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to obtain a waiver of inadmissibility to return to the United States.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship that the applicant's U.S. citizen spouse would face if the applicant were not able to return to the United States, the applicant's family ties in the United States, and her apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's prior unlawful presence in the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her case outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In these proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.