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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: TEGUCIGALPA, HONDURAS

Date: OCT 05 2009

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:

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 that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Tegucigalpa, Honduras. 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 Honduras 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 her last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated March 21, 2007, the OIC found that the record failed to establish extreme hardship to the applicant's U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO, dated April 13, 2007, counsel states that the applicant, her spouse and her child are suffering extreme hardship as result of the decision made by the OIC. Counsel also submits additional documentation in support of the appeal.

In the present application, the record indicates that the applicant was born on April 14, 1985. She entered the United States without inspection on or about July 27, 2000 when she was fifteen years old. The applicant remained in the United States until June 2006. Therefore, the applicant accrued unlawful presence from April 14, 2003, the date she turned eighteen years old until June 2006, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her June 2006 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.

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.

(iii) Exceptions

- (I) No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

(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 and/or parent of the applicant. Hardship the applicant or her child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

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, 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 applicant 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.

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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Honduras and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record of hardship in the applicant's case includes: counsel's brief, three statements from the applicant's spouse, photographs of the applicant and her family, thirty letters from friends, colleagues and family attesting to the hardship the family is experiencing and their good moral character, and a psychological assessment for the applicant's spouse.

The AAO finds that the applicant's spouse will suffer extreme hardship as a result of relocating to Honduras. In his statement submitted on appeal, the applicant's spouse asserts that Honduras is an insecure country and he fears for his family's life while staying there. He states that during one visit to his wife and daughter he heard gunshots coming from their neighbor's house and that his mother-in-law stated that shots are heard often because of gang violence. He also states that his daughter's health has been poor in Honduras, requiring numerous hospital visits, that his wife and daughter were involved in a robbery, and his wife's cousin was shot trying to defend himself from a similar assault. The AAO notes that U.S. Citizenship and Immigration Services currently offers Temporary Protected Status to nationals of Honduras residing in the United States. A Temporary Protected Status designation acknowledges that it is unsafe to return to a country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. Temporary Protected Status for Hondurans has been designated through July 5, 2010. Furthermore, the U.S. Department of State has issued a Travel Alert for all U.S. citizens traveling or residing in Honduras. The Travel Alert, dated July 24, 2009 and extending until October 20, 2009, recommends that all U.S. citizens defer non-essential travel to Honduras because of the unstable political and security situation. Thus, the AAO finds that based on the applicant's spouse's statements and due to the unstable security situation it would be an extreme hardship for the applicant's spouse to relocate to Honduras.

The AAO also finds that it is an extreme hardship for the applicant's spouse to be separated from the applicant. In his statement, submitted on appeal, the applicant's spouse states that before the applicant relocated to Honduras he was working as a pastor with three different missions in Kentucky and attending school. He states that after the applicant's immigrant visa was denied he returned to the United States to work and care for their one month old daughter. He states that during this time he would get only three hours of sleep a day. He states that three incidents (his daughter becoming sick, his falling asleep while driving with his daughter in the car, and his wife's depression from being separated from their daughter) made him decide to bring their daughter to live with the applicant in Honduras. Since relocating his daughter to Honduras the applicant's spouse states that he has quit school and stopped serving with his church in Kentucky. He states that he has moved in with his sister in San Antonio, Texas and sold his home and all the contents because he cannot afford to support two households. The AAO notes that the thirty letters from friends, colleagues and family members support the applicant's spouse's statement concerning his emotional and financial hardship. Moreover, the record contains a psychological assessment, dated April 30, 2008, from a

██████████ at the Biofeedback Center in San Antonio, Texas. ██████████ states that the applicant's spouse reports a significant impact on his functioning due to being separated from his wife and child. ██████████ states that the applicant's spouse reports that he is experiencing significant anxiety and symptoms of depression. ██████████ indicates that the applicant's spouse has had previous problems with depression and suicidal ideation. He lists the symptoms of depression as reportedly suffered by the applicant and states that these symptoms have existed in the past year and have existed previously, but were in full remission prior to the recent stressors. ██████████ also states that the applicant's spouse is currently negative for suicidal ideation, but is positive for a history of suicide attempts, when at age seventeen he attempted to hang himself. The doctor states that the applicant's spouse was saved by his grandmother and did not need hospitalization. Finally, ██████████ states that he discussed possible treatment options with the applicant's spouse to deal with his current stressors, but even with the presence of treatment, if the current psychosocial stressors and life conditions persist it is likely the applicant's spouse will see no improvement in his symptom presentation. He states that it is likely his current situation could deteriorate even further. The applicant's spouse has had to give up his work in his community and church, sell his home and possessions, and relocate to Texas. In addition, the applicant's spouse has a history of depression and suicidal ideations coupled, with the former currently manifesting itself as a result of being separated from the applicant. Thus, the AAO finds that separating the applicant's spouse from the applicant is causing the applicant's spouse hardship that rises to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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-Morales, 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 factor in the present case is the applicant’s unlawful presence in the United States. The AAO notes that the applicant entered the United States without inspection when she was a minor, so this entry will not be considered an adverse factor in determining whether a favorable exercise of discretion is warranted.

The favorable factors in the present case are the applicant’s family ties to the United States; extreme hardship to her U.S. citizen spouse and daughter if she were to be denied a waiver of inadmissibility; the applicant’s lack of a criminal record; and, as indicated by thirty letters submitted by family, colleagues, and friends, the applicant’s value to the community and her good moral character.

The AAO finds that the immigration 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.