

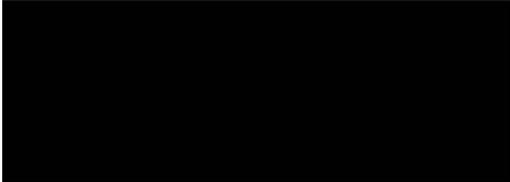
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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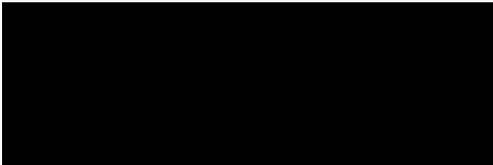
OCT 20 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application 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 dismissed.

The applicant, [REDACTED], is a native and citizen of Ecuador. She 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 admission within 10 years of her last departure from the United States. 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), in order to return to the United States to join her U.S. citizen spouse, [REDACTED].

The Field Office Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the director's decision fails to mention the applicant's spouse's economic standing. Counsel contends that the director's decision fails to discuss the medical treatments the applicant's daughter received for her skull fracture and seizures. Counsel states that the documentation establishes the applicant and her spouse's family ties in the United States and well-standing in their community. Counsel states that the applicant's spouse has been diagnosed with Major Depression Disorder and has been prescribed Citalopram and Trazodone antidepressant medications. Counsel states that the applicant's spouse has also been diagnosed with Somatization Disorder and Dysthymia. Counsel states that the applicant's spouse is suffering from insomnia, loss of appetite, hopelessness and stress. Counsel states that due to the economy in the United States, the applicant's spouse is experiencing even more economic hardship. Counsel states that the applicant's spouse is concerned about the applicant because she has been diagnosed with Major Depression Disorder and has been prescribed Citalopram and Hidroxicina.

In support of the application, the record contains, but is not limited to, medical documentation, financial records, family photographs, copies of the applicant's spouse's siblings' naturalization certificates, and letters from the applicant's spouse, family and friends. The entire record was reviewed and considered in rendering this decision.

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

(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 [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 record shows that the applicant entered the United States without inspection in October 2000. The applicant remained in the United States until departing in August 2008. The director found that the applicant accrued unlawful presence from October 2000 until August 2008. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her August 2008 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.

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. 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 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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [REDACTED], a naturalized U.S. citizen, on December 11, 2004. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have an eight-year-old U.S. citizen child, [REDACTED].

On appeal, counsel asserts that the applicant's spouse has been diagnosed with Major Depression Disorder and has been prescribed Citalopram and Trazodone antidepressant medications. Counsel states that the applicant's spouse has also been diagnosed with Somatization Disorder and Dysthymia. Counsel states that the applicant's spouse is suffering from insomnia, loss of appetite, hopelessness and stress. The record contains evaluations of the applicant's mental health from [REDACTED] West Side Community Health Services, dated May 11, 2009, and [REDACTED], Walk-In Counseling Center, dated May 5, 2009. The record reflects that the applicant was prescribed the antidepressant Trazodone on April 30, 2009.¹

The assessment from [REDACTED] provides, in pertinent part:

[The applicant] is in Ecuador; immigration has denied her residence in the U.S. Since the day [REDACTED] received the letter he is not able to sleep well; his appetite has decreased, he has no energy to do his job, his ability to concentrate has decreased, most of the time he feels tired; he just wants to stay at home but is not able to take care of his home as he use to when his wife was here. He has headaches most of the time and muscular tension. If he gets some sleep he wakes up tired. He is extremely preoccupied with what is going to happen to his family. This is the first time that Mr. [REDACTED] have [sic] been diagnosed with Major Depression Disorder (296.22 DSM IV) and anxiety due to the extreme hardship he is living right now.

Minnesota Multiphasic Personality Inventory-2 (MMPI-2) report provides, in pertinent part:

This client seems to be concerned about his physical health and may have somatic complaints about different parts of his body. The physical concerns could be resistant to past medical interventions and may reflect some difficulty in self-reporting emotional, rather than physical, pain. Somatization may be his major defense against

¹ <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a681038.html>

stress, but currently it doesn't seem to be very effective, since he also appears to be somewhat depressed. Persons with such extensive somatic complaints often have difficulty gaining insight into their own needs and distinguishing between physical and emotional pain. . . . Diagnostic Considerations: Consider Somatization Disorder, dysthymia The stress he is reporting seems to be understandable, given his concern about his wife and family. If anything, he probably is under reporting his distress.

The AAO finds that the situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's spouse will continue to suffer extreme psychological distress if he remains separated from the applicant. The psychological suffering experienced by the applicant's spouse surpasses the hardship typically encountered in instances of separation as demonstrated by his diagnosis with Major Depression Disorder, Somatization Disorder and Dysthymia. Therefore it can be concluded that the applicant's spouse will continue to suffer extreme hardship if he remains separated from the applicant due to her inadmissibility.

As previously stated, extreme hardship to a qualifying relative must be established in the event that he or she remains in the United States or in the event that he or she accompanies the applicant abroad. The record contains a letter from the applicant's spouse that was initially filed with the waiver application, dated July 21, 2008. The applicant's spouse states that his daughter, [REDACTED], has lived in Minneapolis all her life and it would be very hard if she had to move to Ecuador. He states that [REDACTED] only writes and reads in English and it would be very difficult for her to move to Ecuador to learn a new language. He states that his family is in Minneapolis. He notes that his father is a U.S. citizen, his mother is a U.S. lawful permanent resident, he has one U.S. citizen brother, three U.S. citizen sisters, one lawful permanent resident brother, and two lawful permanent resident sisters. He states that it will be very difficult for him to move away from his big family because they are united.

The AAO notes that Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible.

The AAO will consider hardship to the applicant's child, [REDACTED], only insofar as it results in hardship to the applicant's spouse. The applicant states that [REDACTED] only writes and reads in English and it would be very difficult for her to move to Ecuador to learn a new language. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 567 (BIA 1999), the BIA noted that the respondent's wife spoke Spanish and the majority of her family was originally from the respondent's country of citizenship, Mexico. The BIA stated that based on these factors the respondent's wife "should have less difficulty adjusting to live in a foreign country." The record reflects that [REDACTED] parents are from Ecuador, and from her father's statement it can be inferred that she speaks Spanish. Therefore, she should have less difficulty in adjusting to language, culture and residence in Ecuador.

The AAO acknowledges that the applicant's spouse would suffer emotional hardship as a result of his separation from his parents and siblings if he relocated to Ecuador. However, his situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Similarly, in *Shooshtary v. INS*, 39 F.3d 1049, 1051 (9th Cir. 1994), the Ninth Circuit Court of Appeals noted that, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances." Furthermore, the record reflects that the applicant's spouse's parents and siblings are natives of Ecuador. His family would presumably be able to visit him in Ecuador; the AAO notes that the record does not indicate otherwise.

Finally, counsel asserts that the director's decision fails to mention the applicant's spouse's economic standing. Counsel asserts further that the director's decision fails to discuss the medical treatments the applicant's daughter received for her skull fracture and seizures.

The AAO has reviewed the applicant's spouse's financial documentation and finds that it relates to the hardship he would suffer if he remained in the United States without the applicant. The applicant asserts in his affidavit, "if [redacted] can't come back I would have to work a lot less and may have to close my business as I work by contracts and have deadlines to finish, if I can't meet the deadlines I won't be able to take on contracts and it will affect me financially" Since the AAO has already determined that the applicant's spouse is suffering extreme psychological hardship due to his separation from the applicant, it is not necessary for the AAO to discuss whether his economic standing in the United States is an additional hardship factor. The AAO notes that the record lacks evidence demonstrating that the applicant's spouse would suffer financial hardship if he moved with the applicant to Ecuador.

The medical documentation in the record regarding the applicant's daughter's seizures consists of a patient's discharge instruction sheet from Hennepin County Medical Center. The discharge instructions reflect that on December 26, 2001, the applicant's daughter was admitted to the hospital because she had seizures. The instructions reflect that her daughter was released on December 27, 2001 and was not prescribed any medications. The applicant was instructed to take her daughter for a follow-up appointment with her pediatrician. There is no documentation in the record to demonstrate that the applicant's daughter has suffered from a disability or any type of medical condition as a result of her seizure. Nor is there any documentation that would suggest she continues to suffer from seizures and needs on-going medical treatment. Therefore, the AAO cannot conclude that the applicant's daughter has a medical condition that would result in extreme hardship to the applicant's spouse if they were to move to Ecuador.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.