

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

H4

FILE:

[REDACTED]

Office: PANAMA

Date: **APR 21 2009**

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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.

John J. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for more than one year. The applicant is the daughter of a lawful permanent resident and 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 with her mother and siblings in the United States.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting District Director*, dated September 23, 2008.

The record contains, *inter alia*: three psychological evaluations for the applicant's mother, [REDACTED]; a letter from [REDACTED] doctor; letters from the applicant, her mother, and her siblings; letters from the applicant's doctor; several letters of support; a letter from a real estate agent; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

In this case, the record indicates that the applicant entered the United States in September 2001, when she was thirteen years old, using a visitor's visa. The applicant overstayed her visa and on March 3, 2006, when the applicant turned eighteen years old, began to accrue unlawful presence until March 2008 when she returned to Colombia. Thus, the applicant accrued unlawful presence for over one year. She now seeks admission within ten years of her March 2008 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant herself may experience is not a permissible consideration under the Act. *Id.* Once extreme hardship to a qualifying relative 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. *See 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 alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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). In addition, the Court of Appeals for the Ninth Circuit has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations

omitted); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the record shows that the applicant’s mother, [REDACTED] grew up with an abusive and alcoholic father, and that she got married when she was fourteen years old to a man who was twenty-five years older and a former military officer and police officer. *Letter from [REDACTED]* dated November 18, 2008; *Psychological Evaluation by [REDACTED]*, dated June 8, 2008. [REDACTED] husband was abusive and frequently beat her on her head, causing multiple head traumas and causing her to go deaf in one ear. *Letter from [REDACTED]* dated November 18, 2008; *Psychological Evaluation by [REDACTED]* dated June 8, 2008, at 17 (noting that [REDACTED] cannot draw simple geometric figures, an effect associated with head trauma). [REDACTED] husband was murdered during a robbery and [REDACTED] saw her husband’s body after he had been shot in the head. *Psychological Evaluation by [REDACTED]*, *supra*, at 17-18. [REDACTED] does not speak about her first marriage because it is “too painful for her to discuss the years of abuse.” *Id.* [REDACTED] remarried in 1979 to the applicant’s father and gave birth to the applicant when she was forty-two years old. *Id.* at 7. [REDACTED] claims the applicant “is the person she feels closest to in her life” and that her daughter is her “closest confident [sic].” *Id.* at 8.

The record further shows that [REDACTED] runs a day care center and relies on the applicant to help “run [the] daycare effectively,” and to communicate with the children and their parents as [REDACTED] does not speak English. *Letter from [REDACTED]*, dated May 13, 2008. [REDACTED] further states that she and the applicant have never lived apart and that she relies on the applicant to help with the house and pay the bills. *Id.* In addition, [REDACTED] sees a psychologist for depression and states that her entire family is suffering an “unbearable agony” being separated from the applicant. *Id.*

The record also contains three reports from two different Psychologists. The first Psychological Evaluation in the record, dated June 8, 2008, diagnosed [REDACTED] with organic brain dysfunction. *Psychological Evaluation by [REDACTED]*, dated June 8, 2008, at 10. The evaluation further states that [REDACTED] “anxiously expressed suicidal thoughts,” and “has major problems with anxiety and depression.” *Id.* at 12, 13 (emphasis in original); *see also id.* at 14 (stating [REDACTED] “feels life is no longer worthwhile” and that “there is a strong possibility that she has seriously contemplated suicide.”). The report concludes [REDACTED] has “numerous serious mental health problems,” diagnosing her with major depression, an anxiety disorder, chronic post-traumatic stress disorder, and a dependent personality with schizoid personality features. *Id.* at 21.

The second Psychological Evaluation in the record, dated October 17, 2008, states [REDACTED] “worked [herself] into such a state of distress [discussing the applicant’s departure] that she had a nose bleed.” *Psychological Intake Evaluation Report by [REDACTED]*, dated October 17, 2008. This report reviewed the previous Psychological Report and found that [REDACTED] symptoms have not improved over time and that [REDACTED] extreme reaction to her daughter’s departure was

“beyond the normal distress” other families experience, perhaps due to dependent and needy personality, and her organic brain disorder. *Id.* at 2-3.

The third Psychological Report in the record, dated January 14, 2009, states that [REDACTED] continues to take medication for depression; however, her symptoms have not improved and are unlikely to improve without her daughter’s return to the United States. *Psychological Treatment Progress Report by [REDACTED]* dated January 14, 2009. The report states that [REDACTED] “dependent personality style, her difficulties with her memory and day-to-day tasks (possibly due to an organic brain disorder), her chronic PTSD due to her first husband’s murder, and her worries about her daughter’s medical condition (scoliosis), are all factors which exacerbate her symptoms and impede her recovery.” *Id.*

In addition, a letter from [REDACTED] physician states that [REDACTED] has diabetes, hypertension, and dyslipidemia. *Letter from [REDACTED]*, dated March 31, 2008. [REDACTED] physician further states that [REDACTED] has been “greatly depressed” since her daughter’s departure, “[s]o much so that her diabetes control is going haywire.” *Id.*

Letters from [REDACTED] children state that their mother had been severely abused by their father before he was murdered. *Letter from [REDACTED] supra* (stating that he saw his father hit his mother “very violently, more times than I can remember” and that there were times when his mother was bleeding and in visible pain); *Letter from [REDACTED]*, dated November 18, 2008 (stating she saw her father hit her mother “so badly that she had to go to the hospital [and s]ince that time she has been deaf in one ear”). [REDACTED] children also state that [REDACTED] is extremely dependent on the applicant, whom she had twenty years after her other children. *See, e.g., Letter from [REDACTED]* dated May 13, 2008 (stating the applicant and [REDACTED] are “extremely attached to each other”); *Letter from [REDACTED]* dated April 2008 (stating that the applicant and [REDACTED] are closer than [REDACTED] is with her other children and that they have never spent more than a day apart from each other). The applicant helped her mother pay the bills, helped her with the day care center, and helped translate during medical appointments. *Letter from [REDACTED]* dated May 13, 2008. The letters also state that since the applicant’s departure from the United States, [REDACTED] has been completely distraught, depressed, and suicidal. *Letter from [REDACTED]* dated May 13, 2008 (stating that the applicant’s presence in Colombia “is killing my Mom . . . [who] is not the same person any more”); *Letter from [REDACTED]* dated November 17, 2008 (stating that since the applicant left the United States, he has “never, in [his] entire life, seen [his] mother in such a state of disarray”); *Letter from [REDACTED]* dated November 18, 2008 (stating [REDACTED] has been unable to write her own statement for the applicant’s waiver application because “she is too emotional to . . . write . . . her own statement. Every attempt to do so has been accompanied by crying and an inability to express herself.”). [REDACTED] daughter states that [REDACTED] has become “so mentally distraught that she is no longer working many of her jobs” and many of the children in her day care center have left after the parents realized [REDACTED] is very depressed and not attentive to their children. *Letter from [REDACTED]*, dated November 18, 2008. Furthermore, [REDACTED] son states his mother became so distracted due to the applicant’s departure from the United States that while she was driving, she would forget where she was going or how to get home. *Letter from [REDACTED]*

██████████ *supra*. ██████████'s children have become so concerned about her mental state that they have insisted she stop driving. *Id.*; Letter from ██████████ dated November 18, 2008. Since the applicant's departure, ██████████ has lost thirty pounds in six months and forgets to take her daily medications for her diabetes. Letter from ██████████, *supra*.

Upon a complete review of the record evidence, the AAO finds that the applicant has established her mother has suffered, and will continue to suffer, extreme hardship if her waiver application is denied. The record shows that ██████████ has an organic brain disorder, is severely depressed, and possibly suicidal. It is evident from the record that ██████████ has suffered severe abuse from her first husband and that she suffers post-traumatic stress disorder as a result of the violent beatings from her first husband, as well as his violent death. *Psychological Intake Evaluation Report* by ██████████ dated October 17, 2008. In addition, it is evident from the record that although ██████████ has other children, she is extremely close with and dependent upon the applicant, the only child from her second marriage who is twenty or more years younger than her step-siblings. Two different Psychologists emphasize the seriousness of ██████████ numerous mental health problems and her dependent personality, concluding that ██████████ reaction to her daughter's departure goes beyond the distress normally experienced by others and that ██████████ mental health will not improve unless the applicant returns to the United States. See *Psychological Evaluation* by ██████████ *supra*; *Psychological Reports* by ██████████ *supra*. Considering the history of abuse in ██████████'s past, her serious mental health issues, and the fact that the applicant and ██████████ have never previously been apart, the AAO finds that the effect of separation from the applicant on ██████████ goes above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 303 (BIA 1996) (finding extreme hardship to the applicant's wife based on her history of depression and a suicide attempt); cf. ██████████ 271 Fed.Appx. 592, 593-94 (9th Cir. 2008) (unpublished) (stating that a "psychiatrist's opinion that ██████████'s mother will 'likely . . . attempt suicide' [if her son is deported] is . . . highly probative of extreme hardship") (emphasis in original).

Moreover, moving back to Colombia, where ██████████ was born, to avoid separation would be an extreme hardship for ██████████. ██████████, who is sixty-four years old, would be separated from her other children, would need to close her day care center, and would need to adjust to a life in Colombia after having lived in the United States for the past twelve years, a difficult situation made even more complicated given her mental health problems. In addition, relocating to Colombia would disrupt the continuity of her physical as well as mental health care. In sum, the hardship ██████████ would experience if her daughter were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. 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 ██████████ 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 country. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's mother if she were refused admission, particularly in light of her mother's serious mental health issues; significant family ties in the United States including her lawful permanent resident mother and her four U.S. citizen step-siblings; letters of support describing the applicant as an "intelligent, creative, dependable and industrious" student, and an "upstanding, positive role model" who volunteers to help younger children; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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.