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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

H5



Date: **FEB 06 2012**

Office: MIAMI

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a combined motion to reopen and reconsider. The motion to reopen will be granted and the waiver application will be approved.

The record reflects that the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), for fraud or willful misrepresentation. On appeal, the AAO determined that the applicant was also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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. On motion, the applicant does not contest these findings of inadmissibility. Rather, the applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 7, 2007.

On appeal, the AAO determined that the applicant had established that her U.S. citizen spouse would experience extreme hardship were he to relocate to Colombia to reside with the applicant due to her inadmissibility. However, the AAO concluded that the applicant had failed to establish that her spouse would experience extreme hardship were he to remain in the United States while the applicant resided abroad due to her inadmissibility. Consequently, the appeal was dismissed. *Decision of the AAO*, dated September 25, 2009.

On motion, counsel submits the following: a memorandum; psychological and medical documentation pertaining to the applicant's spouse, father-in-law and grandfather-in-law; affidavits from the applicant, her spouse and her father-in-law; financial documentation; information about country conditions in Colombia; and an article regarding the death of Officer [REDACTED].

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states, in pertinent part, the following:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an

alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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....

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, her father-in-law or her grandfather-in-law can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 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*, 138 F.3d at 1293 (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 AAO, in its decision dated September 25, 2009, found that the applicant had established extreme hardship to her U.S. citizen spouse were he to relocate abroad to reside with the applicant as a result of her inadmissibility. *Supra* at 5. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocated abroad due to her inadmissibility. Specifically, the AAO noted that there was insufficient evidence that the applicant's spouse's emotional hardship would rise to the level of extreme hardship. Further, with respect to the applicant's spouse's contention that his wife was his grandfather's primary caretaker when his father is out of town and a relocation abroad would cause him hardship, the AAO noted that there was insufficient evidence showing that this hardship rises to the level of extreme. *Supra* at 5-6.

On motion, counsel addresses the concerns raised by the AAO. To begin, an affidavit has been provided from the applicant's spouse further detailing the hardships he will experience were his spouse to relocate abroad as a result of her inadmissibility. In his affidavit, the applicant's spouse first explains that in the past 6 years he has developed a number of medical and psychological conditions which he feels would worsen were his wife to relocate abroad. He explains that he is suffering from depression and has begun treatment. In addition, the applicant's spouse details that his best friend, whom he served with in the Marine Corps and later with the [REDACTED], was killed in a motorcycle accident in June 2008, and his wife has given him the strength to go on. The applicant's spouse further explains that in May 2009 he suffered a debilitating anxiety attack because his anxiety level had risen greatly since the death of his best friend and the looming thought of his wife being deported. He had to go to the emergency room, and was prescribed valium to help treat future anxiety attacks. He contends that his wife plays a critical role in helping calm him down when the attacks happen and were he to lose her, he does not know how he would deal with the episodes.

Finally, the applicant's spouse explains that his father suffered a cerebral vascular incident (ischemic stroke) in December 2008 and also has diabetes that requires the use of an insulin pump. He is thus no longer able to care for his grandfather on his own and consequently, the applicant is now primary caretaker to both her husband's father and his grandfather while he is at work. He explains that she spends at least 2-4 hours a day helping both his father and grandfather with tasks around the house, including cooking for them and taking them to their doctor's appointments. Were she to relocate abroad, the applicant's spouse asserts that it would put a big strain on him emotionally and financially, as he and his siblings would have to take a lot of time off work to fill in the gaps caused by her absence. *Affidavit of* [REDACTED], dated October 16, 2009.

In support, a letter has been provided from [REDACTED] confirming that the applicant's spouse is receiving individual psychological therapy as a result of his symptoms of depression and anxiety and suicidal ideation. [REDACTED] recommends that the applicant remain in the United States with her husband due to the positive role she plays in her husband's life. *Summary of Psychological Treatment*, dated October 9, 2009. In addition, evidence of the applicant's spouse's visit to the emergency room in July 2008 as a result of a panic attack has been provided. *Report from [REDACTED]*, dated May 23, 2009. Evidence of the applicant's spouse's best friend's death in July 2008 as a result of a motorcycle accident has also been submitted by counsel. Moreover, medical documentation has been provided confirming that the applicant's spouse's father, the primary caretaker for his 91-year old father, is being treated for type 2 diabetes and partial blindness. The documentation further confirms that he recently suffered a stroke and is unable to stand or walk for extended periods of time. *Letter from [REDACTED]* dated October 16, 2009. A letter has also been provided from the applicant's spouse's grandfather's treating physician confirming that he is being treated for mild dementia, a heart condition and high blood pressure, uses a walker, and is being cared for by the applicant's spouse's father. *Letter from [REDACTED]* dated October 16, 2009. Counsel has also submitted an affidavit from the applicant's spouse's father detailing the critical role the applicant plays in his and his father's lives on a daily basis as a result of his and his father's medical conditions. *Affidavit of [REDACTED]* dated October 16, 2009.

On motion, based on a totality of the circumstances, the AAO concludes that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while his wife relocated abroad as a result of her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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 . . . 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse, father-in-law and grandfather-in-law would face if the applicant were to reside in Colombia, regardless of whether they accompanied the applicant or remained in the United States; the payment of taxes; the applicant's apparent lack of a criminal record; home ownership; and family and community ties. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation and periods of unlawful presence while in the United States.

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

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the motion to reopen will be granted and the waiver application approved.

ORDER: The motion to reopen is granted. The waiver application is approved.