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



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

H6

FILE:

Office: MEXICO CITY (PANAMA CITY)

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**APR 16 2010**

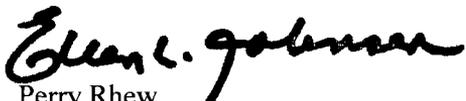
IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

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.

  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and 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 under 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 a period of one year or more. The applicant who resided in the United States from January 2000, when she entered the United States without inspection at Tijuana, California, to July 1, 2006, when she returned to Colombia. She is married to a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. 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 and reside with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated June 21, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred as a matter of fact and law in denying the waiver application and cited baseless conclusions and misinterpreted the law in the denial. *See Notice of Appeal to the AAO (Form I-290B)*. Counsel further states that the tone of the denial appeared to be "malicious and derogatory" and the reasons for the denial appeared to reflect a personal prejudice of the officer. *Notice of Appeal to the AAO*. Counsel contends that the applicant's husband would suffer extreme hardship if he relocated to Colombia with the applicant because he has lived his entire life in the United States and would be separated from his family members, including his youngest son, over whom he has joint custody. *Brief in Support of Appeal* at 4. Counsel further asserts that the applicant's husband would suffer hardship in Colombia because of dangerous conditions there and would face financial hardship due to the possible loss of his pension if he moves to Colombia. *Brief* at 4. Counsel additionally asserts that the applicant's husband suffers from various injuries and medical conditions caused by his service as a peace officer that have left him almost disabled, and he requires the care and assistance of the applicant. *Brief* at 5. In support of the waiver application and appeal, counsel submitted letters from the applicant and her husband, letters from the applicant's stepchildren, medical records for the applicant's husband, copies of bills and other financial documents, and information on conditions in Colombia. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 Secretary, 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.

Counsel contends that USCIS erred in requiring that the extreme hardship claim be documented and explanations be specific and detailed. Counsel states that since a couple faces many hardship when separated by thousands of miles that “cannot be detailed specifically on paper,” it would be impossible to comply with these requirements, and USCIS asks for things the applicant cannot provide only to deny the waiver. *See Brief* at 2-3. The AAO notes, however, that 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. Section 291 of the Act, 8 U.S.C. § 1361. Further, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.* at 566. The BIA has further stated:

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 Ninth Circuit Court of Appeals has held, “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.” *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) (remanding to the BIA) (“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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS, supra*, the court further 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a forty-eight year-old native and citizen of Colombia who resided in the United States from January 2000, when she entered without inspection, until July 1, 2006. The applicant married her husband, a fifty-eight year-old native and citizen of the United States, on July 12, 2004. The applicant currently resides in Colombia and her husband resides in Los Angeles, California.

Counsel asserts that the applicant’s husband would experience extreme hardship if he relocated to Colombia with the applicant because he would be separated from family members in the United States, including his adult children, and also due to the ongoing civil strife and lack of security there. *Counsel’s Statement in Support of Waiver Application*. Counsel submitted letters from the applicant’s husband’s adult children and from family friends, documentation of his past employment with the California Highway Patrol, documentation indicating he owns a home in California, and well as information on conditions in Colombia. The AAO further notes that a more recent travel warning issued by the U.S. Department of State states,

The Department of State continues to warn U.S. citizens of the dangers of travel to Colombia. While security in Colombia has improved significantly in recent years, violence by narco-terrorist groups continues to affect some rural areas as well as large cities. The potential for violence by terrorists and other criminal elements exists in all

parts of the country. . . . The incidence of kidnapping in Colombia has diminished significantly from its peak at the beginning of this decade. Nevertheless, terrorist groups such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and other criminal organizations continue to kidnap and hold civilians for ransom or as political bargaining chips. See *Travel Warning for Colombia* dated March 25, 2009.

It appears that relocating to Colombia at the present time would pose a risk to the safety of the applicant's husband in light of dangerous conditions there, including terrorist violence and kidnappings for ransom. When considered in the aggregate, these conditions, when combined with the emotional and economic hardship that would result from separation from his family members in the United States, loss of his home and employment in the United States, and severing his other ties and having to adjust to life in Colombia, would constitute extreme hardship.

Counsel additionally asserts that the applicant's husband would suffer extreme hardship if he remained in the United States because of the emotional effects of separation from the applicant and because of his medical condition, for which he requires total knee replacement surgery. In support of these assertions, counsel submitted letters from the applicant's husband's doctors, including a letter stating that he is "almost disabled" due to numerous "debilitating injuries" suffered while serving as a police officer in Los Angeles, California. *Letter from* [REDACTED] dated August 3, 2007. [REDACTED] states that the applicant's husband has undergone surgery for both right and left knee torn meniscus, but his mobility is still affected despite the surgery. *Letter from* [REDACTED] More recent letters from physicians in Colombia and California state that the applicant's husband has osteoarthritis in both knees, with increasing pain and progressive deformity, and state that he is a candidate for total knee replacement surgery, "a surgical procedure with a number of risks and potential complications." See *Letter from* [REDACTED] dated July 15, 2008 and *Letter from* [REDACTED] dated July 21, 2008.

Significant conditions of health of a qualifying relative, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record establishes that the applicant's husband suffers from a medical condition that is causing increasing pain and affecting his mobility and major surgery has been recommended by two physicians to correct this condition. Such a surgery would affect his mobility and cause him to need assistance with his daily care during his recovery, and counsel indicates that he is reluctant to undergo the surgery "because he requires his wife's care and support to recover." This physical hardship, when combined with the emotional hardship resulting from separation from the applicant, would result in hardship beyond the common results of removal or inadmissibility and rise to the level of extreme hardship for the applicant's husband.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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 section 212(a)(9)(B)(v) 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 factors in the present case are the applicant's immigration violations, including entering the United States without inspection and working and residing unlawfully in the United States for several years. The favorable factors in the present case are the hardship to the applicant's husband, the applicant's family ties to the United States, including her son, who is now a lawful permanent resident, and her husband and his family, and the fact that she has never been convicted of a crime.

The AAO finds that applicant's violations of the immigration laws 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.