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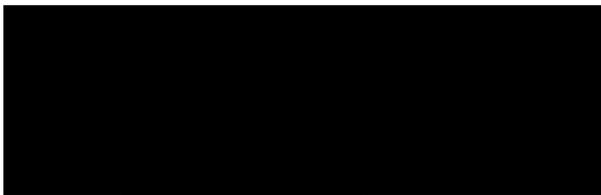
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

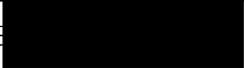


**U.S. Citizenship
and Immigration
Services**

H6



FILE



Office: MEXICO CITY (PANAMA CITY)

Date: **APR 22 2010**

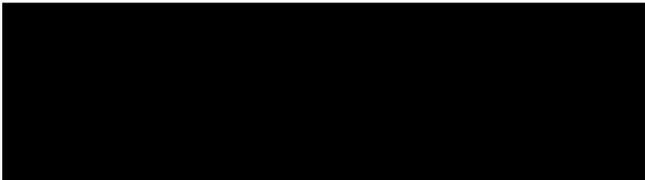
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 and the waiver application will be approved.

The record reflects that the applicant, a native and citizen of Ecuador, entered the United States without authorization in August 1997 and did not depart the United States until June 2006. The applicant was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 10, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated October 1, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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.

....

(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....

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. 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.

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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration the applicant's spouse asserts that she is suffering emotional hardship due to long-term separation from the applicant because she contends that he is her true love and she cannot imagine a life without him. She notes that they are each other's number one supporters through everything. *Letter from* [REDACTED]

The applicant's spouse further states that due to her husband's absence, she is suffering financially, as she has become solely responsible for all of their finances. She notes that in addition to taking care of her living expenses, she has the burden of paying for communication, travel, legal expenses and financially supporting her spouse in Ecuador as he only earns a salary of \$200 per month, well below the amount he was earning while residing in the United States. *Letter from* [REDACTED] dated September 10, 2007.

In support of the emotional hardship referenced, an evaluation has been provided from [REDACTED] Dr. [REDACTED] outlines in detail the sexual abuse inflicted on the applicant's spouse by her father, the exposure to drug abuse by her parents and abandonment from her family. The applicant's spouse's father is currently serving a sentence of 45 years for said abuse. [REDACTED] concludes that the applicant's spouse is suffering from post-traumatic stress disorder and major depression, and notes that her "history of abuse, neglect, abandonment and loss is one of the worst I have heard.... In the past thirteen years she has for all intents and purposes been separated from or

completely lost her sister, brother, grandparents, mother, father and now husband.... [redacted] [the applicant] from the United States represents one last severe hardship for [redacted] the applicant's spouse] in a life that may not be able to endure any more hardship...." *Psychological Report from* [redacted] dated August 31, 2007.

In addition, a letter has been provided by the applicant and his spouse's pastor, [redacted] [redacted] confirming that they underwent counseling prior to the applicant's departure, to assist them in handling the difficulties that they anticipated facing being separated as a married couple. [redacted] concludes that were they to be separated, the applicant and his spouse will suffer a marital strain, in addition to suffering financially, emotionally and educationally. *Letter from* [redacted] dated June 3, 2006.

As for the financial hardship referenced by the applicant's spouse, a letter has been provided from the applicant's U.S. employer, confirming that prior to departing the United States, he was earning \$1800 per month as a cook and food service manager. *Letter from* [redacted] and [redacted] dated June 5, 2006.

Due to the applicant's spouse's traumatic past and the financial hardship she is encountering due to the applicant's absence, the propensity for depression and her need for her spouse to support her on a day to day basis, it has been established that the applicant's spouse would experience extreme hardship if the applicant were unable to return to the United States to reside with the applicant's spouse. The applicant's spouse needs the emotional, psychological and financial support that the applicant would provide; the applicant's continued absence would be extreme for the applicant's spouse. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts that there are poor job opportunities in Ecuador. She notes that her husband has been able to secure employment as a teacher in a private school in Ecuador, but only earns \$200 per month. The applicant's spouse thus contends that she would be unable to maintain a decent standard of living in Ecuador.² *Supra* at 1. Moreover, counsel asserts that the applicant's spouse would suffer emotional hardship as she has never lived in Ecuador, is unfamiliar with the country and customs, and does not speak Spanish. *Brief in Support of Appeal*, dated October 1, 2007.

Were the applicant's spouse to relocate to Ecuador to reside with the applicant due to his inadmissibility, the record reflects that the applicant's spouse would encounter financial hardship due the problematic economic situation in Ecuador, as corroborated by the U.S. Department of State. Moreover, the applicant's spouse would suffer hardship due to unfamiliarity with the language and culture and long-term separation from her country, her community and her support system. As such,

² The U.S. Department of State reports that the poverty rate in Ecuador in 2006 was 38% and the per capita income in 2008 was less than \$4000. *Background Note-Ecuador, U.S. Department of State*, dated October 2009.

the AAO concludes that based on a totality of the circumstances, the applicant's spouse would experience extreme hardship were she to relocate to Ecuador to reside with the applicant due to his inadmissibility.

The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Further, the AAO notes that the applicant's U.S. citizen spouse would suffer hardship as a result of continued separation from the applicant. However, the grant or denial of the waiver does not turn only on the establishment of extreme hardship. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he 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 hardships that the applicant's U.S. citizen spouse would face if the applicant were not present in the United States, in light of her traumatic family past, community ties, support letters from family and friends, the apparent lack of a criminal record, gainful employment, and the passage of more than twelve years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry to the United States and unlawful presence and employment while in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardships imposed on the applicant's spouse as a result of the applicant's inadmissibility outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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 sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.