

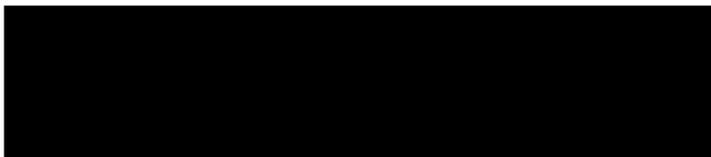
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**



HG

FILE:



Office: MEXICO CITY (PANAMA CITY)

Date: **AUG 05 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:

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, Mexico City, Mexico, and 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)(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 readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with her United States citizen husband.

The district director concluded that the applicant failed to comply with the Request For Evidence (RFE) issued on a Form I-72, dated July 3, 2007, to have her fingerprints retaken at the United States Consulate in Bogota, Colombia, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 7, 2007.<sup>1</sup>

On appeal, counsel asserts that the district director erred in denying the applicant's Form I-601 waiver on the grounds that the applicant failed to comply with the RFE, because there is sufficient evidence in the record to show that the applicant complied with the RFE. Counsel submits evidence on appeal demonstrating that the applicant did comply with the RFE. *Form I-290B*, filed on December 10, 2007. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, all pertinent evidence in the record, including new evidence properly submitted on appeal will be reviewed and considered in rendering this decision on appeal. Any errors committed by the district director, therefore will not prejudice the applicant.

The record includes but is not limited to, an affidavit from the applicant, affidavits from the applicant's husband, letters from the applicant's husband's physician including a listing of medications he is taking, letters from the applicant's husband's family and friends, and country condition reports on 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:

(B) Aliens Unlawfully Present.-

---

<sup>1</sup> The record reflects that on July 3, 2007, the district director issued a Form I-72 (RFE) requesting the applicant to appear at the U.S. Consulate in Bogota, Colombia, for a new fingerprint because her initial fingerprint was deemed UNCLASSIFIABLE. The record reflects that the applicant did comply as requested but the district director failed to acknowledge the applicant's compliance and denied the waiver application solely on this basis. The district director did not make any determination on the merits of the waiver application.

- (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.

In the present case, the record indicates that the applicant entered the United States on March 28, 2000 as a visitor for pleasure and remained in the United States until July 15, 2002. The applicant reentered the United States on August 9, 2002 as a visitor for pleasure and remained in the United States until March 18, 2004. The applicant overstayed her visits in 2000 and 2002. The record also shows that the applicant worked in the United States during her visits in 2000 and 2002 without prior authorization from the United States government.<sup>2</sup> On June 1, 2004, the applicant's United States citizen (USC) husband filed a Form I-130 petition on the applicant's behalf. On December 13, 2004, the applicant's Form I-130 was approved. On July 28, 2006, the applicant filed a Form I-601 application for waiver. On November 7, 2007, the district director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and is seeking readmission within ten years of her last departure from the United States.

The applicant accrued unlawful presence from September 27, 2000 until July 15, 2002, when she departed the United States; and again from February 8, 2003 until March 18, 2004, when she departed the United States for the last time. The applicant is seeking admission into the United States within ten years of her March 18, 2004 departure. The applicant is, therefore, 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself would experience upon removal is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. Once

---

<sup>2</sup> Waiver Interview of the applicant on July 18, 2006, and Form G-325A (Biographic Information) dated March 30, 2006.

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 *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 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 also 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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 applicant's husband states that relocation to Colombia would cause him extreme hardship. Specifically, the applicant's husband states that he lives with his parents and his sister in Charlotte, North Carolina. He states that his parents are 81 and 82 years old respectively, that they have serious medical problems, and that he is their primary caregiver as well as the caregiver for his sister who is mentally and physically disabled. The applicant's husband fears that if he were to relocate to Colombia, his parents and sister would not have anyone to take care of them. Additionally, the applicant's husband states that he has numerous medical problems that require that he be frequently monitored by his physicians in the United States. The applicant's husband fears that he will not be able to receive adequate medical care in Colombia. Finally, the applicant's husband states that he is concerned for his safety and the safety of his wife because of the "rampant crime and disorder in Colombia." *Affidavit of* [REDACTED], dated December 20, 2007. Counsel states that the applicant's husband will suffer hardship if he moved to Colombia because of the following reasons: he is the primary caregiver for his ailing parents and disabled sister; he will have difficulty obtaining employment because Colombia is an impoverished country; the volatile, unstable and inhospitable situation in Colombia; he has lived in the Charlotte area all his life and has established roots in the United States, and he has property, family and an ongoing life in the Charlotte area, and if he is forced to move to Colombia, "it would burden him, because it has been his dream to take care of his family in their home." *Counsel Brief in Support of Unlawful Presence Waiver*, dated July 18, 2006.

The record includes letters from [REDACTED] detailing the applicant's husband's medical conditions and the medications he is taking. In his March 9, 2006 letter, [REDACTED] states that the applicant's husband has medical conditions that require "close periodic monitoring by medical services available in the Charlotte area," and that the applicant's husband needs to be treated in the United States. [REDACTED] references the inadequate medical evaluation and treatment the applicant's husband received for prostatitis in Colombia during his recent visit there. *See Letter from* [REDACTED], dated March 9, 2006. The record also contains United States Department of State Country Reports on Human Rights Practices on Colombia, for 2004, and United States Department of State Bureau of Consular Affairs Country Specific Information on Colombia, dated June 21, 2007, detailing the high level of crime and violence and the difficulties faced by foreigners in the country. Additionally, the AAO notes that the U.S. Department of State has issued a travel warning for Colombia, warning American citizens of the dangers of travel to Colombia. As noted by the U.S. Department of State:

In recent months there has been a marked increase in violent crime in Colombia. Murder rates have risen significantly . . . kidnapping remains a serious threat. American citizens have been victims of violent crime, including kidnapping and murder.

*Travel Warning – Colombia, U.S. Department of State, Bureau of Consular Affairs, dated March 5, 2010.*

Thus, the AAO finds that the evidence in the record is sufficient to establish that the applicant's husband would suffer extreme hardship if he relocated to Colombia. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 ) noting relevance of the presence of family ties to U.S. citizen or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate, and the financial impact of departure). Given the applicant's husband's strong family ties to his U.S. citizen parents and sister in the United States, his strong community ties in the Charlotte area, his medical condition, and the documented violence in Columbia, relocation to Colombia would cause hardship to the applicant's husband beyond what would normally be expected upon relocation.

The applicant's husband states that separation from his wife has caused him and continues to cause him extreme emotional and financial hardship. Specifically, the applicant's husband states that he needs the applicant in the United States to help him care for his parents and his sister due to their ages and health conditions. The applicant's husband states that he is torn between choosing to be with his wife and his responsibilities to his parents and sister and that it is a burden for him to travel back and forth to Colombia to visit his wife. *Affidavit of* [REDACTED] dated December 20, 2007. Counsel states that if the applicant is forced to stay in Colombia, her husband would suffer extreme hardship because of "the egregious increase in his care-providing responsibilities for taking care of both two aging parents, and his mentally retarded sister, [REDACTED] without the assistance of [the applicant]." *See Counsel's Brief in Support of Unlawful Presence Waiver*, dated July 18, 2006. [REDACTED] states that it is a physical and medical hardship for the applicant to make repeated trips to Colombia to see his wife. [REDACTED] also states that the applicant's husband has medical issues including depression which has recently worsened due to his multiple travels and trips to Colombia to try to assist the applicant obtain an appropriate visa to return to the United States, that the applicant's husband has been prescribed Prozac for depression and anxiety and he suspects that "his condition may worsen with [the applicant's] current immigration difficulties." *See Letter from* [REDACTED] dated March 9, 2006. In a letter of support for the applicant's waiver request, [REDACTED] states that requiring the applicant's husband to leave the country to be with the applicant will create an extreme hardship for the applicant's husband and his family because he is the primary caregiver for his elderly parents and his sister who has cerebral palsy. *Letter from* [REDACTED] dated March 10, 2006. [REDACTED] reiterates the applicant's husband's medical condition and requests that the applicant be allowed to return to the United States so that she can help take care of her in-laws. *Id.*

The applicant's husband has provided evidence of his serious medical condition as well as evidence of his family's serious medical conditions. The record contains a list of all the medications that the applicant and his family are taking. The evidence also shows that the applicant's husband's condition is getting worse due to his depression, separation from his wife, concern about his parents and his sister, and concern about his wife's safety in Colombia, given the level of violence in that country.

Thus, a preponderance of the relevant evidence demonstrates that the hardships faced by the applicant's husband due to family separation, cumulatively rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

A review of the documentation in the record, when considered in the aggregate, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship if the applicant is unable to reside in the United States with her husband. Moreover, it has been established that the applicant's U.S. citizen husband would suffer extreme hardship were he to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

Although extreme hardship is a requirement for a waiver of inadmissibility under section 212(a)(9)(B)(v), once established, it does not create an entitlement to such relief. Rather, extreme hardship to a qualifying relative is one positive factor to be considered in the determination of whether or not the applicant merits a favorable exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The negative factors in this case are the applicant's unlawful presence and unauthorized employment in the United States. The positive factors in this case include the extreme hardship the applicant's United States citizen husband faces if the waiver request is denied, and her lack of a criminal record.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained.