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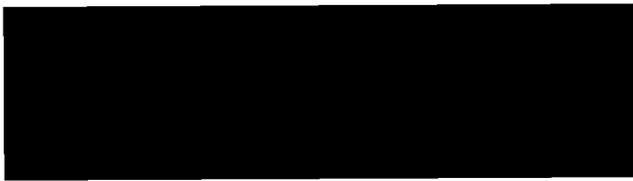
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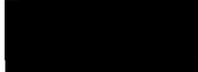
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2 H6



FILE:  consolidated therein)

Office: MEXICO CITY, MEXICO
(PANAMA CITY, PANAMA)

Date: **JUN 25 2010**

IN RE: Applicant: 

APPLICATIONS: 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: SELF-REPRESENTED

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 naturalized United States citizen and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and Petition for Alien Fiancé(e) (Form I-129F). 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 and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2007.

On appeal, the applicant's husband claims that he and his children are suffering extreme hardship. *Form I-290B*, filed December 11, 2007.

The record includes, but is not limited to, statements from the applicant, her husband, her sister and her nephew; documents pertaining to the applicant's immigration proceedings; psychological evaluations of the applicant's husband and children; and medical documents for the applicant's husband. 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.-

- (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 applied for admission to the United States on February 19, 1999, on a B-1/B-2 nonimmigrant visa and was determined to be inadmissible. On March 4, 1999, a Notice to Appear (NTA) was issued against the applicant. On the same day, the applicant was paroled into the United States in order to pursue an asylum claim. On June 10, 1999, an immigration judge ordered the applicant removed from the United States *in absentia*. On July 18, 2000, the applicant filed a motion to reopen the immigration judge's decision. On July 31, 2000, the immigration judge denied the applicant's motion to reopen. On or about October 20, 2000, the applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (BIA). On May 3, 2001, the BIA dismissed the applicant's appeal. On April 8, 2002, the applicant married her husband, a naturalized United States citizen, in Florida. On May 13, 2002, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 10, 2004, the applicant's Form I-130 was approved. On July 23, 2004, the applicant filed a motion to reopen with the BIA. On August 24, 2004, the BIA denied the applicant's motion to reopen. On or about December 21, 2004, the applicant departed the United States. On May 8, 2006, the applicant's husband filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On August 2, 2006, the applicant's Form I-129F was approved. On December 12, 2006, the applicant filed a Form I-601. On November 14, 2007, the District Director, Mexico City, Mexico, denied the applicant's Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to her United States citizen spouse.

The AAO notes that pursuant to section 212(a)(9)(B)(iii)(II) of the Act, "[n]o period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i)...". However, the record does not establish that the applicant filed an asylum application. Therefore, the applicant accrued unlawful presence from July 11, 1999, the day after an immigration judge ordered the applicant removed from the United States, until December 21, 2004, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her December 21, 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Beyond the decision of the District Director, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact.¹ The AAO notes that during a sworn statement taken on February

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

20, 1999, the applicant admitted to violating her nonimmigrant status during previous visits by being employed without authorization. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, for the applicant*, dated February 10, 1999. The applicant stated that she entered the United States as a visitor on four separate occasions; the first on April 30, 1994, the second on August 15, 1995, the third on August 21, 1996, and the fourth on November 8, 1997. *Id.* She claimed that she requested extensions for the first three visits, and she admitted to working without authorization during her second and third visits to the United States. *Id.* The AAO notes that when the applicant requested extensions of her B-2 nonimmigrant visas in 1995 and 1996, it was to continue her unauthorized employment. Additionally, when she sought admission into the United States in 1996, she failed to inform the immigration officer that she would be continuing her unauthorized employment in the United States. Based on the record before it, the AAO finds that in seeking admission to the United States as a nonimmigrant, the applicant misrepresented her previous violations of her nonimmigrant status. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and must seek a waiver of this inadmissibility under section 212(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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(i) and section 212(a)(9)(B)(v) waivers of the bar to admission resulting from violations of sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act are 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 experiences upon removal is not directly relevant to a determination of extreme hardship under sections 212(i) and 212(a)(9)(B)(v) of the Act. The AAO also notes that the record contains references to the hardship that the applicant's sons would suffer if the applicant were denied admission into the United States. However, sections 212(i) and 212(a)(9)(B)(v) of the Act are applicable solely where the applicant establishes extreme hardship to a citizen or lawfully resident

spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's sons will not be considered in this proceeding except to the extent that it creates hardship for their father, the only qualifying relative. 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).

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 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*

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).

Extreme hardship to a qualifying relative must be established in the event of relocation or in the event that the qualifying relative resides in the United States, as there is no requirement that the qualifying relative reside outside the United States based on the denial of the applicant’s waiver request.

On appeal, the applicant’s husband states he and his children are suffering extreme mental and psychological hardship. In an undated statement, the applicant’s husband states his “life is declining. [His] health is deteriorated and [his] spirit is down.... [He] [is] suffering from depression and arterial hypertension.” The AAO notes that in June 2005, Dr. [REDACTED] a medical doctor in Colombia, diagnosed the applicant’s husband with high blood pressure and prescribed him medication for his condition. In a psychological evaluation dated November 29, 2007, Dr. [REDACTED] diagnosed the applicant’s husband with Post-Traumatic Stress Disorder and Depressive Syndrome. The AAO notes that the applicant’s husband was prescribed a medication for anxiety. In a psychological report dated November 13, 2006, Ms. [REDACTED] finds the applicant is “in a state of distress and anxiety due to the separation of her family.”

In a statement dated November 14, 2006, the applicant states the “separation of [their] family, caused by [her] absence, has brought [them] a lot of hardship, both economically and emotionally.” The AAO notes that the record fails to contain documentary evidence, e.g., country conditions reports on Colombia, that demonstrates that the applicant’s husband would be unable to obtain employment upon relocation. The applicant states her children are growing up without their father and her husband states he is “losing the best part of [his] children’s life.” The applicant’s husband claims his children are suffering distress by being separated from him, and they “are also under medical care and undergoing therapy.” In psychological evaluations dated November 30, 2007, Dr. [REDACTED] determined that the applicant’s youngest son, [REDACTED] is anxious and having emotional difficulties, and the applicant’s oldest son, [REDACTED], is suffering from separation anxiety.

The AAO notes that in a travel warning issued on March 5, 2010, the U.S. Department of State warns United States citizens of the dangers of traveling to Colombia. The U.S. Department of State reports that American citizens have been the victims of violent crimes, including kidnapping and murder. *U.S. Department of State, Travel Warning – Colombia*, dated March 5, 2010. Additionally, the U.S. Department of State notes that violence by narco-terrorist groups and other criminal elements exists in all parts of the country, and kidnapping remains a serious threat; however, the “the U.S. government’s ability to assist kidnapping victims is limited.” *Id.* Based on the hardship factors presented the AAO finds that the relocation of the applicant’s husband to Colombia would result in extreme hardship.

For the reasons discussed above combined with the extreme emotional harm the applicant’s husband will experience due to concern about the applicant’s well-being and safety in Colombia, the AAO finds that the applicant’s husband would also experience extreme hardship were he to remain in the United States without the applicant. Dr. [REDACTED] reports that “[t]he issue of safety is a source of worry [for the

applicant's husband], considering the political and social instability in Colombia." Additionally, in a letter dated December 1, 2007, the applicant's employer, Mr. [REDACTED] states that the applicant's husband is suffering from mental stress and "the longing" for his family "will effect [sic] [his] performance at work."

The AAO finds that the applicant meets the requirements for a waiver of her grounds of inadmissibility under section 212(i) and section 212(a)(9)(B) of the Act, in that the applicant's spouse is suffering extreme psychological and financial hardship as a result of his separation from the applicant. Accordingly, the AAO finds that the applicant has established that her naturalized United States citizen husband would suffer extreme hardship if her waiver of inadmissibility application were denied.

The favorable factors presented by the applicant are the extreme hardship to her United States citizen husband and children, who depend on her for emotional support, and no criminal record apart from her immigration violations.

The unfavorable factors include the applicant's entries into the United States by misrepresentation, and periods of unauthorized presence and employment.

While the AAO does not condone her actions, the applicant has established that the favorable factors in her application outweigh the unfavorable factors. In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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