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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE:



Office: MEXICO CITY (PANAMA), MEXICO

Date: MAR 03 2010

IN RE:



APPLICATION:

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

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City (Panama), Mexico. The matter 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 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 his last departure from the United States. The applicant is the son of a U.S. citizen father and has a U.S. citizen stepmother. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated July 9, 2007, the district director found that the applicant failed to establish extreme hardship to his U.S. citizen father as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated July 26, 2007, counsel states that the applicant's father and step-mother would suffer extreme hardship if the applicant is not granted an immigrant visa. Counsel also submits additional evidence of hardship

In the present application, the record indicates that the applicant entered the United States without inspection on or about September 22, 1999 at the age of fifteen years old. On January 29, 2001 the applicant turned eighteen years old and began to accrue unlawful presence. The applicant remained in the United States until March 10, 2006. Therefore, the applicant accrued unlawful presence from January 29, 2001 until March 10, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his March 10, 2006 departure from the United States. Therefore, the applicant is 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.

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 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.

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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th 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 *Perez v. INS*, 96 F.3d 390 (9th Cir.

1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to the applicant’s father must be established in the event that he resides in Colombia and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record of hardship includes: counsel’s brief, a psychological evaluation for the applicant’s father, a statement from the applicant’s father and step-mother, and two statements from the applicant.

Counsel’s brief dated August 23, 2007 and a Psychological Evaluation dated July 25, 2007 state that the applicant’s father is suffering from generalized anxiety disorder as a result of being separated from the applicant. The psychological evaluation states that the applicant’s father left the applicant in Colombia at the age of six years old to come to the United States to find employment, and that he returned to Colombia when the applicant was thirteen and found an undisciplined teenager. The evaluation states that the applicant’s father made arrangements for the applicant to come to the United States where he became a good student, and now he is faced with the possibility of losing his son again. In the psychological evaluation, [REDACTED] finds that the applicant’s father is suffering from anxiety as a result of the applicant’s immigration status. He states that the applicant’s father demonstrates that he is highly reactive to stress and that he has a weak support system. [REDACTED] states that the applicant’s father seems to worry about everything, even those things that seem insignificant. The applicant’s father relayed to [REDACTED] how his worrying about his son affects his relationship with his wife. The applicant’s father also states that he is distracted at work, cannot sleep, and feels tired all the time. [REDACTED] concludes that the applicant’s father is experiencing elevated and significant stressors and anxieties regarding the forced separation from his son and recommends that the applicant’s son be returned to the United States.

In a statement, dated August 17, 2007, the applicant’s father restates many of the same facts he stated to [REDACTED]. He states that because of his worrying about his son his relationship with his wife is suffering and that his clothing business is suffering as well. He also states that Colombia is a dangerous place. In a statement, dated August 20, 2007, the applicant’s stepmother states that the applicant’s father is under a great deal of stress, he does not eat, he does not sleep, and he is extremely nervous all of the time. She states that she is very worried about the future of their family business and the future of her relationship with her husband.

The AAO notes that the applicant has established that his father would suffer extreme hardship as a result of his inadmissibility. The applicant’s father has significant ties to the United States. He has lived in the United States for nineteen years, he has owned a business in the United States for twelve

years, he has another son who lives with him in the United States, and he is married to a U.S. citizen. To relocate to Colombia to be with his son the applicant's father would have to separate from his family members and face losing his business. In addition, the applicant's father's psychologist, as well as the applicant's mother's stepmother and three family friends, have all submitted statements in regards to the applicant's father's inability to deal with the stress that comes from being separated from his son. Moreover, the history of the father-son relationship in the applicant's case exacerbates the emotional hardship experienced by the applicant's father in regards to his son being in Colombia. Thus, the AAO finds that the applicant's father is experiencing extreme hardship as a result of being separated from his son and would experience extreme hardship as a result of relocating to Colombia.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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, "[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 adverse factors in the present case are the applicant's illegal entry into the United States and his unlawful presence in the United States. The AAO notes that in weighing the adverse factors in the applicant's case against the favorable factors, the applicant's age at the time of entry is taken into consideration.

The favorable factors in the present case are the applicant's family ties to the United States; extreme hardship to his U.S. citizen father if he were to be denied a waiver of inadmissibility; the applicant's consistent record of employment; and the applicant's lack of a criminal record or offense.

The AAO finds that the immigration violations committed by the applicant are serious in nature and 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.