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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

[redacted]

FILE: [redacted] Office: PANAMA CITY, PANAMA Date: OCT 28 2010

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Tariq Syed
for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. 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 [redacted] He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen and has three U.S. citizen children. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 24, 2010.

On appeal, the applicant's spouse asserts that she is experiencing physical, emotional and financial impacts which result in an extreme hardship on her. *Statement of the Applicant's Spouse*, dated July 10, 2010. The record includes, but is not limited to: numerous statements from the applicant's spouse; statements from the applicant's spouse's mother, father and other family members; statements from friends and acquaintances of the applicant and her spouse; a statement from [redacted] dated August 16, 2010; copies of birth certificates for the applicant's children; copies of hospital records from Ecuador;[1] a copy of a referral form for the [redacted] copies of medical documents labeled Treatment Plan, from Occupations, Inc., and containing information on a psycho-social evaluation of the applicant's spouse; a statement from [redacted] discussing the mental health condition of the applicant's spouse; a statement from [redacted] asking that the applicant's waiver be granted so that he may assist in supporting his three children; a hand-written statement from [redacted] from the [redacted], discussing the applicant's spouse's mental health status; copies of invoices for medical services, bank statements, income statements for the applicant's spouse, and a credit card in the applicant's spouse's name; a copy of a tax return for 2008 for the applicant's spouse; photographs of the applicant, his spouse and their children; and hand-written letters from the applicant's children.

[1] While the AAO would like to consider this evidence in confirming the applicant's spouse's assertions, the documents are in Spanish. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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-
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> . . . .
>
> (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.
>
> . . . .

The record indicates that the applicant entered the United States with a crewman visa on May 28, 2002. His authorized period of stay expired on June 27, 2002, but he remained beyond his authorized stay until he departed the United States voluntarily on December 3, 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in

the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to [redacted] finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be

considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

With regard to hardship upon relocation, the applicant's spouse asserts that relocating to Ecuador with the applicant would result in extreme hardship to her. *Statement of the Applicant's Spouse*, July 10, 2010. She states that the poor medical infrastructure, crime and conditions in the country would be intolerable for her and her children. *Id.* She notes that she has previously visited Ecuador, and that while there she was robbed at gun point twice, and had to pay for an expensive private hospital to care for her sick son because the public hospital could not provide for his care. *Id.*

The record contains a treatment plan from Dr. [redacted] dated September 8, 2010, in which she lists various medical conditions for the applicant, including adjustment disorder with mixed anxiety and depressed mood, obesity, hypertension, high blood pressure, and a history of lower back injuries. The record contains copies of a hospital bill, presumably for her son, but the document is in Spanish and a translated copy has not been provided. The AAO notes that the applicant's spouse is currently experiencing significant financial impact due to her spouse's inadmissibility. While the AAO cannot consider this evidence without a translated copy, it will accept her statement that her son was ill while visiting [redacted] The AAO would also note that the U.S. Department of State has recognized that crime is a severe problem in Ecuador. *See Country Specific Information, Ecuador*, U.S. Department of State, Bureau of Consular Affairs, www.travel.state.gov, last visited on October 26, 2010. The record contains the birth certificates for the applicant and her children, establishing that the applicant's spouse and her children were born in the United States.

Considering the impacts of relocation with three children to a country with heavy crime and inadequate medical infrastructure, the applicant's medical issues, separation from her family in the United States and the lack of family ties in Ecuador, the AAO concludes that the impacts of relocating with the applicant to Ecuador would result in impacts which rise above those commonly experienced upon relocation.

Although the record indicates that the applicant's spouse would experience extreme hardship upon relocation, it must also establish that she would experience extreme hardship if she were to remain in the United States.

With regard to hardship upon separation, the applicant's spouse has asserted that she is experiencing physical, emotional and financial impacts resulting in extreme hardship. *Statement of the Applicant's*

Spouse, dated July 10, 2010. She explains that she recently suffered a back injury from a car wreck, precluding her from working and complicating her ability to take care of their three children, and that she also suffers from hypertension and knee problems. *Id.* She is currently unemployed. *Id.* She states that she has a history of anxiety and depression, and is unable to control her emotional outbursts due to the strain of separation from the applicant. *Id.* She has asserted that, while she resided with her parents for a time, the strain of having her and her children reside in their home with little or no contribution from her to help pay the bills has resulted in a tense relationships with her parents and they have asked her to find shelter elsewhere. *Id.*

The record contains statements from social workers and primary care doctors attesting to the fact that the applicant's spouse has been [redacted] *Treatment Plan,* [redacted] dated September 10, 2010. These documents also indicate that she is experiencing back and knee pain, and has been prescribed pain medication. *Id.* Statements from the applicant's spouse, her family and her friends all indicate that she has been prone to emotional outbursts, that her situation has impacted their family ties, and that she appears unable to cope with these impact of separation from the applicant while having to provide for their three children. Id.; *see also, generally, statements of family and friends of the applicant's spouse.* Based on these findings the AAO concludes that the applicant's spouse is experiencing significant emotional and physical impact due to the applicant's inadmissibility, and that these impacts constitute a substantial factor in an aggregate determination of extreme hardship.

With regard to financial impact, the record contains copies of the applicant's spouse's 2008 tax return. This evidence indicates that she reported only [redacted] in income for that year, an amount far below the federal poverty guidelines for a family of four. The record contains a referral sheet for public assistance, requesting help with child-care services and monthly rent. Statements from the applicant's spouse's family also attest to the financial impact of the applicant's removal, and assert that she has had to struggle to provide physical and financial support for their three children. Based on these findings the AAO concludes that the applicant's spouse is experiencing significant financial impact, and that this constitutes a factor to be considered in an aggregate determination of extreme hardship.

When these hardship factors are weighed in the aggregate, the emotional, physical and financial impacts of the applicant's removal result in impacts greater than those commonly experienced by the relatives of inadmissible aliens, and as such constitute extreme hardship.

As the record indicates that a qualifying relative will experience extreme hardship upon separation or relocation, the AAO may now make a discretionary determination of whether to grant the applicant's waiver.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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(h)(1)(B) 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 AAO finds that the unfavorable factor in this case includes the applicant's unlawful presence and unlawful employment. The factors weighing in favor of a discretionary grant in this case include the presence of the applicant's spouse, the presence of his three U.S. citizen children, extreme hardship to his wife, and the statements from family and friends attesting to his moral character. The positive factors outweigh the negative factors in this case, and as such the AAO will exercise favorable discretion and grant the applicant's waiver. The appeal will be sustained.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.