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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

[redacted]

H6

FILE: [redacted] Office: PANAMA Date: SEP 02 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*, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

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,

for 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 waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of Panama 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 10 years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she 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 and children.

The District Director found that the applicant 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 December 5, 2007.

On appeal, counsel states that the director erred in failing to evaluate the evidence and asserts that the applicant has submitted sufficient evidence of the extreme hardship the applicant's spouse would suffer. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record includes counsel's brief, letters from the applicant, his wife, and children detailing the hardship claim, a psychological evaluation, and various letters describing the impact of the applicant's separation on the applicant and her four children. *See letters from* [redacted] *and his daughters, psychological evaluations from* [redacted] *and* [redacted] *of Heartland Counseling, and attachments* submitted with the appeal. 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-
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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.
>
> . . . .
>
> (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 application, the record indicates that the applicant entered the United States in August 1991, without inspection, and remained in an unlawful status until October 2006, when she departed for Panama. On April 25, 2005, the applicant's husband filed a Form I-130 on behalf of the applicant. On November 7, 2005, the applicant's Form I-130 was approved. On November 9, 2006, the applicant filed a Form I-601. On December 5, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, until October 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her October 2006 departure from the United States. 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 experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is applicable solely where the applicant establishes extreme hardship to his 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. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse. 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 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).

In his letter, the applicant's husband states his family needs the applicant in the United States because her absence causes emotional hardship and affects their way of life and their young children. The applicant's husband states that since his wife left for Panama he has had difficulty sleeping and managing the household and caring for his four daughters, and at the same time working a stressful job as a butcher to pay household expenses and support the applicant in Panama. He states that he "worry so much at night mostly, that sleeping is very tough." Letters from the applicant's daughters and family members also indicate that the family has had difficulty adjusting to the applicant's absence. Letters from family acquaintances and the children's teachers indicate that since the applicant departed to Panama the children have experienced difficulty at school and in their daily functioning, and a report from [redacted] indicates that the eldest child's ADD condition has worsened after her mother's departure. A psychological evaluation from [redacted] and [redacted] of Heartland Counseling confirms that that the applicant's spouse is seriously impacted by stress as a result of the applicant's absence from the family,

and states that the applicant's spouse "is likely to develop more explicit symptoms of depression and anxiety" as a result of the applicant's separation.

The AAO notes that the applicant's children may experience some hardship because the applicant is in Panama; however, the applicant's children are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. Although hardship to the applicant's children will not be considered separately, the AAO finds that such hardship will cause severe emotional hardship to the applicant's spouse, as he is left alone to care for the four children and at the same time work to support the family. The entire parental burden of raising the children has been solely on the applicant's spouse. Having to cope with the stress of raising and caring for four children alone and managing the household would result in emotional hardship for the applicant's spouse. In this case, the AAO finds that the level of emotional hardship the applicant's spouse would endure in the United States is beyond what would normally be expected of families who are separated.

Counsel states that the applicant's spouse would suffer hardship in Panama if he joins the applicant in Panama because he does not have relatives in Panama and he would not get employment with comparable pay in Panama. It is noted that counsel does not submit evidence of the household expenses the applicant would incur in Panama and the income the applicant and her husband would earn, if any, in Panama. The AAO finds that the applicant's spouse will suffer financial hardship as a result of relocating to Panama, a poor economy.

The applicant's spouse states that his children will have difficult adjusting in Panama, noting that his children are not fluent in Spanish. Counsel states that the applicant is also concerned about the future of his daughters in Panama and that his daughters will be treated as "second class citizens" there because he has "witnessed how women in general are treated in the culture." Counsel references the *Department of State Country Reports on Human Rights Practices 2005*. It is noted that the psychological report also indicates the applicant's spouse's similar concerns for his daughters relocating to Panama. The AAO notes that difficulty adjusting to a new country and culture could result in hardship for individuals in this family who are not fluent in the language of the country. Counsel also states the applicant and her family will be like "strangers in a strange land" because the applicant and her husband do not have "any significant family residing in Panama."

Counsel states that crime in Panama could impact the applicant and her family, noting that the applicant's spouse's expressed concern for his family's safety in Panama. Counsel references the U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices* in Panama, and travel warnings for Panama. *U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2005 Human Rights Report: Panama,* March 8, 2005.

The record reflects that the applicant's spouse would be forced to relocate to a country where he has not lived for several years. He would have to leave his support network, and his gainful employment, and he would be concerned about his and his family's safety and well-being at all times while in Panama. The cumulative effect of these factors establish that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her United States citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and U.S. citizen children would face if the applicant were to relocate abroad, regardless of whether they relocate to Panama or remain in the United States, the applicant's apparent lack of a criminal record, and the passage of more than thirteen years since the applicant's entry to the United States without inspection. The unfavorable factors in this matter are the applicant's entry to the United States without inspection and her unlawful residence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

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