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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: DEC 20 2012 Office: PANAMA CITY, PANAMA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), (i) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applications for waiver of grounds of inadmissibility and permission to reapply for admission into the United States after deportation or removal were denied by the District 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 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 again seeking admission within 10 years of the date of the applicant's departure. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for seeking a benefit under the Act by willful misrepresentation. Finally, the applicant was found to be inadmissible under section 212(a)(9)(A)(ii) of the Act for having departed from the United States while subject to an order of removal. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, as well as permission to reapply for admission into the United States after deportation or removal under section 212(a)(9)(A)(iii) of the Act, in order to return to the United States to reside with her U.S. citizen spouse.

The District Director concluded that the applicant was inadmissible under sections 212(a)(9)(B)(i)(II), 212(a)(6)(C)(i) and 212(a)(9)(A)(ii) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen spouse, the qualifying relative. The District Director denied the application accordingly and the Field Office Director affirmed the decision on motion. *Decision of District Director,* dated August 12, 2010; *Decision of Field Office Director,* dated October 20, 2011.

On appeal, the applicant submits a brief, a college acceptance letter for the applicant's daughter, hardship statements from the applicant's spouse, daughter, and mother-in-law, an employment offer letter for the applicant, support letters from the applicant's family, employment records for the applicant's spouse, medical records for the applicant's spouse, daughter and father-in-law, tax records and financial documents. The record also includes, but is not limited to, a brief submitted by prior counsel, additional hardship statements from the applicant, her spouse and her child, additional financial and academic records, a country conditions report on Colombia published by the U.S. Department of State, and copies of birth and marriage certificates.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other Aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [Secretary of Department of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

(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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The Field Office Director determined that the applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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.

Section 212(i)(1) of the Act provides, in pertinent part:

> 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....

The record establishes that the applicant entered the United States without inspection on May 5, 1997 and returned to Colombia in June 2009. U.S. Citizenship and Immigration Services (USCIS) records show that the applicant provided immigration officials with a false name and nationality after her initial entry when attempting to board a flight at the El Paso International Airport on May 6, 1997. The applicant is therefore inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act for seeking admission after more than one year of unlawful presence and for seeking a benefit under the Act through willful misrepresentation. The applicant was granted voluntary departure with an alternate order of removal on October 31, 2002 but the applicant did not depart until June 2009. Therefore, she is also inadmissible under section 212(a)(9)(A)(ii)(II) of the Act for having departed the United States while subject to an outstanding order of removal and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Inadmissibility is not contested on appeal.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's qualifying relative for a waiver of these grounds of inadmissibility is her U.S. citizen 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).

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 of Immigration Appeals (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of

the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under sections 212(a)(9)(B)(v) and 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The record shows that the applicant's spouse would suffer extreme hardship if he were to relocate to Colombia to reside with the applicant. The applicant's spouse is a native of the United States, does not speak Spanish, and almost his entire nuclear family resides in Las Vegas, Nevada, the same city in which the applicant's spouse resides, including his aging parents. The record contains numerous support letters from family members and makes clear that the applicant's spouse has a close relationship with his family in the United States. Further, the record establishes that the applicant's spouse has significant employment and property ties to the United States, beyond his family ties. The applicant's spouse, now 53 years old, has held the same position of receiving clerk with the same employer for 23 years earning $22.26 per hour, and jointly with the applicant purchased a home for his family in 2006. The record indicates that he would face significant difficulties finding employment and maintaining his personal safety in Colombia. Colombia's unemployment rate is 12 percent, the projected economic growth for 2009 was zero percent and Colombia faces continued narco-terrorism. *U.S. Department of State Background Note for Colombia*, dated October 4, 2010. A U.S. Department of State Travel Warning for Colombia states that there has been "a marked increase in violent crime" and "U.S. citizens have been the victims of violent crime, including kidnapping and murder." *U.S. Department of State Travel Warning for Colombia* dated November 10, 2010. The relevant evidence, when considered in the aggregate, demonstrates that the applicant's spouse would suffer extreme hardship upon relocation to Colombia.

Regarding extreme hardship upon separation, the applicant's spouse claims he is suffering and will continue to suffer emotional, medical, and financial hardship if he remains separated from the applicant. The record indicates that the applicant has resided in Colombia since June 2009, while her spouse has remained in the United States. The record also indicates that the applicant's 18-year-old daughter was, at the time of the appeal, residing with the applicant's spouse, her stepfather, in the United States since the applicant's departure.

With regards to emotional and medical hardship upon separation, the applicant's spouse states that he is an emotional wreck as a result of the loss of daily support of the applicant. The applicant's spouse states that he is so distraught by the separation from his wife that he is unable to focus or concentrate and sometimes has to stop what he is doing at work to go to the restroom for a break so that his co-workers do not see him crying. The applicant's spouse's supervisor and colleague of 23 years reports that he has noticed a change in the applicant's spouse, the applicant's spouse has made numerous mistakes in receiving procedures, and after counseling the applicant's spouse

regarding work-related errors, learned that the applicant's spouse is under a great deal of financial and emotional stress without his wife. *Letter from* [redacted] dated November 30, 2011. Other evidence supports the applicant's claims of emotional and medical hardship. The record contains two letters from the primary care doctor of the applicant's spouse indicating that he has been suffering from depression and high anxiety and taking the prescription medications Xanax and Restoril to treat these conditions for an extended period of time. The applicant's spouse and extended family state that he has had difficulty sleeping since his spouse left the United States. The record also indicates that the applicant's spouse is taking prescription medication to treat sleep disorders and that his primary care doctor is concerned that that the applicant's spouse requires additional treatment.

The record also indicates that the applicant's spouse raised the applicant's daughter in the United States during the applicant's absence. Medical records show that the applicant's daughter has suffered from Disabling Dysmenorrheal and Irritable Bowel Syndrome, which have been aggravated by the stress of separation from the applicant. The evidence demonstrates that the applicant's daughter's condition has added to the applicant's spouse's financial expenses and his emotional distress.

The applicant's spouse further reports that he is struggling financially to pay for the costs of separation, such as telephone cards and trips to Colombia, in addition to his other living expenses in the United States. The record contains evidence that the applicant's spouse has previously borrowed money from family members to defray some of the costs of separation. The record also contains documentation of the applicant's spouse's income and expenses in the United States showing that his expenses exceed his income. The record contains documentation that the applicant's spouse is in danger of losing their home in foreclosure proceedings and recent requests to modify his mortgage have been denied by the bank. The record illustrates that the value of the applicant and her spouse's home dropped significantly with tax assessment records showing a drop in value from $227,014 in 2008-2009 to $157,560 in 2009-2010. The record also indicates that the applicant and her husband have other debt in the United States including a home equity loan of $54,456 of which $12,074 was past due as of August 31, 2011. The record further shows that the applicant has been unable to find employment in Colombia since her departure in 2009 and the family's 2010 tax returns indicate that the applicant's spouse is the sole financial provider for his family. When considered in the aggregate, the emotional and financial hardships in this case rise to the level of extreme.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to obtain a waiver of inadmissibility.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and

humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship that the applicant's U.S. citizen spouse would face if the applicant were not able to return to the United States, the applicant's family ties in the United States, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's willful misrepresentation of her identity to immigration officers and her subsequent unlawful presence in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The District Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Decision of District Director,* dated August 12, 2010. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible

for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, it will withdraw the District Director's decision on the Form I-212 and render a new decision.

On October 31, 2002, the applicant became subject to the removal order upon her failure to timely depart the United States voluntarily. As such, she is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission. A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. On appeal, the applicant has demonstrated that she warrants a favorable exercise of discretion to grant her Form I-601 waiver application. For the reasons stated in the foregoing discussion, the applicant's Form I-212 should also be granted as a matter of discretion.

In these proceedings, the burden of proving eligibility remains entirely with the applicant. 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.