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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

[Redacted]

FILE:

[Redacted]

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

Date: FEB 11 2011

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his last departure from the United States. The record indicates that the applicant is the son of a United States citizen and 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 his United States citizen mother, stepfather, and siblings.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 6, 2008.

On appeal, the applicant, through counsel, claims that the applicant's United States citizen mother will suffer extreme hardship. *Form I-290B*, filed September 5, 2008.

The record includes, but is not limited to, counsel's appeal brief; declarations and affidavits from the applicant, his mother, and stepfather in English and Spanish¹; letters of support for the applicant and his mother; a psychological report for the applicant's mother; a statement from [REDACTED] regarding the applicant's mother's medical conditions; wage and tax documents; documents from the applicant's removal proceeding; articles on the Colombian military and violence; and country conditions reports on Colombia. The entire record was reviewed and considered, with the exception of the Spanish language statement, 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-

....

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant is in Spanish and is not accompanied by English-language translations, the AAO will not consider it in this proceeding.

(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.

(iii) Exceptions.-

(II) Asylees.-No 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) unless the alien during such period was employed without authorization in the United States.

(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 on or about May 22, 1990, the applicant entered the United States without inspection. On or about July 25, 1999, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On November 28, 2000, an immigration judge granted the applicant voluntary departure to depart the United States by December 28, 2000. On October 5, 2004, the applicant voluntarily departed the United States.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 25, 1999, the date he filed his Form I-589. The applicant is attempting to seek admission into the United States within ten years of his October 5, 2004 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 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 United States Citizenship and Immigration Service (USCIS) then

assesses whether a favorable exercise of discretion is warranted. [REDACTED] 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 (Board) 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.

[REDACTED]

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. [REDACTED] 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. [REDACTED] 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) (“[REDACTED] 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 Mexico, 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 [REDACTED] 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.

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 first prong of the analysis addresses hardship to the applicant's mother if she relocates to Colombia. In an undated declaration, the applicant's mother states she "cannot go back to Colombia and reunite with [the applicant] because [her] life is in the United States and because [her] husband and [her] other children live here." In a statement dated September 18, 2008, [REDACTED] the applicant's sister, states her mother "has become very isolated, absent minded, depressed," she "cries constantly," and she "has begun to have several health problems, from gaining weight, to losing weight by not eating." In a statement dated September 11, 2008, [REDACTED] states the applicant's mother has been diagnosed with obesity, anxiety, depression, recurrent urticaria due to stress, and hypertension. [REDACTED] reports that the applicant's mother is worried "about the suboptimal quality of sanitation, police protection, hygiene, employment and medical care in Colombia compared to that in the USA." [REDACTED] also reports that the applicant's mother "is unable to move to Colombia because she loves this land of liberty, freedom and justice. She also has health problems for which she trusts the American physicians and healthcare system. Besides, her husband has a rewarding career here, and her other children are also here." The AAO notes the applicant's mother's concerns regarding the difficulties she would face in relocating to Colombia.

The AAO acknowledges that the applicant's mother has resided in the United States for many years, and she may experience hardship in relocating to Colombia. The AAO notes that the record contains U.S. Department of State country conditions reports from 1998 and 1999. However, no updated country conditions materials or documentation has been submitted to establish that the applicant's mother would be unable to obtain employment in Colombia. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the record fails to demonstrate that the applicant's mother would be unable to obtain medical treatment for her medical conditions in Colombia. *Id.* Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his mother would suffer extreme hardship if she relocated to Colombia.

The second prong addresses hardship to the applicant's mother upon remaining in the United States. In counsel's statement dated October 2, 2008, counsel claims the applicant's mother is suffering "extreme

emotional and financial hardship.” The applicant’s mother states the applicant is her “emotional and financial support,” she needs him “in [her] life to assist [her] permanently,” and she is depressed, sad and worried. In a statement dated September 18, 2008, [REDACTED], the applicant’s brother, states the applicant’s “absence has cause[d] great grief for [their] mother.” [REDACTED] states his mother “is very different, sadder, complicated and disturbed.” In a statement dated September 16, 2008, the applicant’s stepfather states the applicant’s mother “has changed her character and personality. That she started suffering sleeplessness, [and] depression, that follows crying, anxiety temper changes, [loss] of sexual appetite, and nervousness.” In a psychological report dated September 8, 2008, family therapist [REDACTED] indicates that the applicant’s mother has a history of losses and depression, and she is suffering from depression, major recurrent, and generalized anxiety disorder. [REDACTED] states the applicant’s mother’s symptoms include loss of energy, sleep pattern disturbance, anxiety and nervousness with intense worry, withdrawal, depression, increased appetite, feeling of helplessness, hopelessness, and worthlessness, and anhedonia. The applicant’s stepfather states the applicant’s “presence is vital for [the applicant’s mother] to become healthier.” Additionally, [REDACTED] states the applicant’s mother has “expressed great concern about [the applicant’s] safety in Colombia.” The applicant’s mother states she is “very concerned for [the applicant’s] wellbeing” because in Colombia, “social problems and terrorism are everywhere.” As noted above, [REDACTED] states the applicant’s mother has been diagnosed with obesity, anxiety, depression, recurrent urticaria due to stress, and hypertension. The AAO notes the medical concerns of the applicant’s mother. Additionally, the AAO acknowledges that the applicant’s mother is experiencing emotional issues because of the separation from the applicant.

Counsel states the applicant’s mother has no income, and her “husband has to work extra to cover the household expenses.” The applicant’s mother states she and her husband “are suffering a number of extreme financial difficulties since [they] can not [sic] count with [the applicant’s] financial assistance.” [REDACTED] reports that the applicant “has no work because of the unstable Colombian economy and infrastructure.” While the AAO notes the applicant’s mother’s and stepfather’s claims of financial hardship, it does not find the record to support them. The AAO notes that the record contains no documentation that establishes the applicant’s mother’s and/or stepfather’s income or expenses in the applicant’s absence. Additionally, other than [REDACTED] statement, the AAO notes that the applicant has submitted no evidence to establish that he is unable to obtain employment in Colombia and, thereby, reduce the financial burden on his mother. *Id.*

The AAO finds that when the applicant’s mother’s emotional and medical issues are considered in combination with the normal hardships that result from the exclusion of a loved one, the applicant has established that his mother would experience extreme hardship if she remained in the United States.

However, in that the record does not also establish that the applicant’s mother would suffer extreme hardship if she relocated to Colombia, the applicant has failed to establish extreme hardship to his mother under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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 remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.