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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

Date: **JUL 26 2011**

Office: PANAMA CITY, PANAMA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and 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:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact; and 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 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 married to a United States citizen and is the father of three Colombian citizen children and one United States citizen stepdaughter. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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 spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 7, 2010.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *Form I-290B*, filed November 9, 2010. Counsel claims that the applicant's wife "is currently and will continue to suffer extreme hardship." *Id.*

The record includes, but is not limited to, counsel's motion to expedite, counsel's appeal brief, counsel's brief in support of the applicant's Form I-601, statements from the applicant and his wife in English and Spanish¹, letters of support for the applicant and his wife, medical documents for the applicant's wife and in-law's, a letter from [REDACTED] regarding the applicant's wife's mental health, tax and insurance documents, pay stubs and retirement documents for the applicant's wife, household and utility bills, bank statements, school documents for the applicant's children, marriage and divorce documents for the applicant and his wife, a U.S. Department of State Human Rights Report on Colombia, articles on endometrial hyperplasia and endometrial polyps cancer, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and

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 an English-language translation, the AAO will not consider it in this proceeding.

considered, with the exception of the Spanish language statement, in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (I) The Attorney General [now the Secretary of Homeland Security, "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...

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.
- (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.

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- (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.

In the present case, the record indicates that the applicant entered the United States on April 15, 2000, as a B-2 nonimmigrant visitor for pleasure. On October 12, 2000, the applicant departed the United States. On October 22, 2000, the applicant reentered the United States and was placed into secondary inspection. During secondary inspection, the applicant admitted to obtaining a backdated Colombian entry stamp of June 12, 2000, in order to conceal his unlawful presence in the United States. At that time, he withdrew his admission into the United States and stated he wanted to apply for asylum. The applicant filed an Application for Asylum and for Withholding of Removal (Form I-589), which an immigration judge denied on November 13, 2001. The applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board), which the Board dismissed on January 21, 2003. On or about July 19, 2006, the applicant filed a motion to reopen the Board's decision. On October 27, 2006, the Board denied the applicant's motion to reopen. On or about November 27, 2006, the applicant filed a motion to reconsider with the Board. On March 22, 2007, the Board denied the applicant's motion to reconsider. On July 15, 2008, the applicant was removed from the United States.

The applicant obtained a fraudulent Colombian entry stamp in an effort to conceal his prior overstay in the U.S. The AAO finds that this was a misrepresentation of a material fact made in an effort to procure admission to the United States. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

Under section 212(a)(9)(B)(iii)(II) of the Act, no period of time in which the applicant has a bona fide asylum application pending shall be taken into account in determining the period of unlawful presence in the United States, unless the applicant was employed without authorization. The AAO notes that the applicant accrued unlawful presence for more than one year from March 23, 2007, the day after the Board denied the applicant's motion to reconsider, until July 15, 2008, when he was removed from the United States. The applicant is seeking admission into the United States within ten years of his July 15, 2008 removal. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 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 Solcido-Salcido*, 138 F.3d at 1293 (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.

In counsel's appeal brief dated November 30, 2010, counsel states "the separation from [the applicant's wife's] family in the United States that [she] will suffer combined with any difficulty the applicant's wife would have finding employment and adjusting to Colombia, where she has never lived and has [no] ties, would rise to the level of extreme hardship." Counsel states there have been "several drastic human right violations in Colombia, which will affect [the applicant's wife] if she is to move there." The AAO notes that counsel submitted a 2009 U.S. Department of State Human Rights Report on Colombia. Additionally, the AAO notes that in a travel warning issued on November 10, 2010, the U.S. Department of State warns United States citizens of the dangers of traveling to Colombia. The U.S. Department of State reports that "[w]hile security in Colombia has improved significantly in recent years, violence by narco-terrorist groups continues to affect some rural areas as well as large cities." *U.S. Department of State, Travel Warning - Colombia*, dated November 10, 2010. Additionally, the U.S. Department of State notes that "[t]errorist activity remains a threat throughout the country.... While the Embassy possesses no information concerning specific and credible threats against U.S. citizens in Colombia, they are strongly encouraged to exercise caution and remain vigilant." *Id.* Further, the U.S. Department of State notes that kidnapping remains a serious threat and "U.S. citizens have been the victims of violent crime, including kidnapping and murder." *Id.* However, the AAO notes that the report indicates that the "incidence of kidnapping in Colombia has diminished significantly from its peak at the beginning of this decade." *Id.* The AAO notes the general safety issues in Colombia.

Counsel states the applicant's wife has lived her entire life in the United States, all her family resides in the United States, she has no ties to Colombia, her mother is elderly with multiple medical problems and she helps her with her care, she is raising the applicant's children in the United States and they are adapted to the United States, she has worked for the federal government for over 25 years, she has property and assets in the United States, including a home and vehicle, and she is the primary wage earner for the family and provides the family with medical insurance. In a statement dated October 20, 2010, the applicant's wife states if she were to join the applicant in Colombia, she would have to leave her "25 year \$65,000.00 income job" and this "would be detrimental to [her]." The AAO notes that evidence in the record establishes that the applicant's wife has been employed with the federal government since November 14, 1985. The applicant's wife states her "income is essential to [her] well being." Counsel states the applicant's wife "qualifies for retirement in November 2016" and if she moved to Colombia, "[s]he would lose her retirement benefits, her health benefits and an excellent potential for a promotion." The applicant's wife states that the thought of losing her income and the financial difficulties she will have in retirement is causing her depression. In a letter dated October 22, 2010, licensed social worker George Burton reports that the applicant's wife has "headaches, insomnia, problems maintaining attention, anxiety, panic attacks, and depression." Mr. Burton indicates that the applicant's wife "is very worried that if [the applicant] is not allowed to join her in the United States

she would have to give up her career.” The AAO notes the applicant’s wife’s employment, retirement, and mental health concerns.

The applicant’s wife states her mother [REDACTED] not want her to leave the country. [REDACTED] indicates that the applicant’s wife “is concerned for her elderly parents who are aging. She has cared for them since they moved to the State of Florida for the past eight years.” The applicant’s wife claims that she financially helps her parents and even “helped them with the down payment of their home.” The applicant’s wife states if she moves to Colombia, she will not be able to afford to send for her parents or for her to travel back to the United States to visit them. The applicant’s wife states her “mother is in a remission state of Breast cancer and has diabetes type II with multiple other problems.” In a letter dated October 22, 2010, [REDACTED] states the applicant’s mother-in-law is elderly, she suffers from multiple medical problems, and the applicant’s wife helps with her care. However, the AAO notes that [REDACTED] does not indicate what medical issues the applicant’s mother-in-law is suffering from, the severity of her medical issues, or how often she receives treatment and/or monitoring for her medical conditions. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Additionally, there is no medical documentation in the record that the applicant’s mother-in-law had breast cancer and/or suffers from diabetes. In a letter dated February 20, 2009, [REDACTED] states both of the applicant’s wife’s parents are elderly and they suffer from multiple medical problems. In an undated statement, the applicant’s wife states her father “has to get an esophageal operation.” The AAO notes that other than the letter from [REDACTED] no medical documentation has been submitted establishing what medical issues the applicant’s father-in-law suffers from or the severity of his medical conditions. However, the AAO notes the applicant’s wife’s concerns for her parents.

Counsel states it “would be detrimental for [the applicant’s children] to move to Colombia where they have not been for over 10 years.” The applicant’s wife states her stepchildren “never knew their biological mother as she passed away when the youngest was only six months old and [her stepson] was 2 years old. The only mother that they’ve ever known is [her].” Additionally, the applicant’s wife states the thought of being separated from her biological daughter hurts. Counsel states the applicant’s wife’s biological daughter is studying in college and the applicant’s wife “is the only parent that she has close to her, has lived with her and is extremely close to.” The applicant’s wife states her daughter “solely depends on [her].” The AAO notes the applicant’s wife’s concerns for her stepchildren and daughter.

The AAO acknowledges that the applicant’s wife is a native and citizen of the United States and that she may experience some hardship in relocating to Colombia. Based on the applicant’s spouse’s lack of ties to Colombia; the security concerns in Colombia; her emotional issues; her separation from her family including her parents who suffer from multiple medical conditions; having to raise her stepchildren in Colombia; the loss of her employment, retirement, and medical insurance; and the

possible loss of her home in the United States, the AAO finds that the applicant's wife would suffer extreme hardship if she were to relocate to Colombia to be with the applicant.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, in a statement dated January 16, 2009, the applicant states his wife "tries to travel to Colombia as frequent as she can but because of her job and the financial situation [it] is very difficult for her to travel that often." In the applicant's waiver interview on April 21, 2009, the applicant stated that he provides financial support for his wife. However, the AAO notes the financial concerns of the applicant's wife.

The applicant's wife states her family has been torn apart, and it "is causing [her] so much stress in [her] daily life and [has] significantly...disrupted [her] mental well being." The applicant's wife states "[i]t has been an extreme mental anguish to wait and live in the unknown.... The sorrow and the inability to function everyday progresses and with a multitude of emotions [she] [does] [not] seem stable anymore." Counsel states the applicant's absence from the United States has "emotionally traumatized" his wife. she "has gotten physically sick," and been "diagnosed with Depression." As noted above, [REDACTED] reports that the applicant's wife has "headaches, insomnia, problems maintaining attention, anxiety, panic attacks, and depression." The AAO notes that [REDACTED] did not specifically diagnose the applicant's wife with depression. However, the AAO notes the mental health concerns for the applicant's wife.

In counsel's motion to expedite dated April 27, 2011, counsel claims that the applicant's wife "has been diagnosed with endometrial hyperplasia," which is a "pre-cancer diagnosis with an approximate 35% risk of cancer." The AAO notes that counsel submitted two articles on endometrial hyperplasia and endometrial polyps cancer which support her claims. In a letter dated April 22, 2011, [REDACTED] states the applicant's wife has been diagnosed with endometrial hyperplasia. He recommends that "she have laparoscopic hysterectomy, bilateral ovary removal, and possible pelvic lymph node dissection." He recommends that she have "assistance and family supportive care from [the applicant] during her post operative recovery for approximately 6 weeks." Counsel states the applicant's wife "is raising [the applicant's] 2 children by herself"; however, "after the surgery she won't be able to work nor take care of the children, she would not be able to drive and would need to rest after such a delicate surgery." In a letter dated April 6, 2011, [REDACTED] states "[i]t is a severe hardship for [the applicant's wife] to undergo this major surgery without the assistance of [the applicant] to help her with their 12 and 14 year old children, drive her for the two weeks after surgery and otherwise provide care after discharge from the hospital. She has no family or other support in Brevard County." Counsel states "[t]he severity of this health condition and amount of stress that this family is going through is immeasurable. [The applicant's wife] needs [the applicant] more than ever." The AAO notes the applicant's wife's medical issues.

The AAO finds the record to include some documentation of the applicant's wife's income and expenses; however, this material offers insufficient proof that the applicant's wife is unable to support herself in the applicant's absence. The financial documentation in the record reflects that the

applicant's wife is the primary wage earner in the household, and there is no evidence that she has encountered economic challenges since the applicant's removal. Additionally, the AAO notes that there is no documentary evidence in the record establishing that the applicant is unable to obtain employment in Colombia and, thereby, financially assist his wife from outside the United States. However, considering the applicant's spouse's medical problems, her mental health issues, raising the applicant's two children without their father, assisting her mother without the applicant's support, the expense of traveling to Colombia to visit the applicant, and the normal hardships that result from the permanent separation of a loved one, the AAO finds the record to establish that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) and section 212(a)(9)(B)(v) of the Act.

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-Morales, 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 misrepresentation, his order of removal, his unlawful presence and his unauthorized employment. The favorable and mitigating factors are the applicant's United States citizen wife and lawful permanent resident children, the extreme hardship to his wife if he were refused admission, the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) 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 met that burden. Accordingly, the appeal will be sustained.

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