

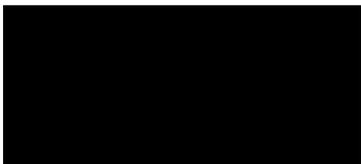
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

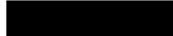
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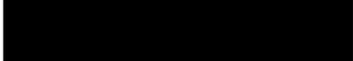
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Office: PANAMA CITY, PANAMA

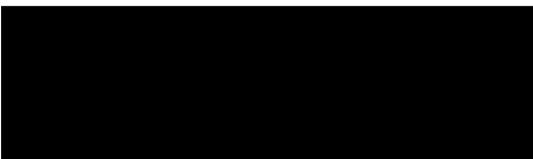
FILE: 

IN RE:

Applicant: 

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

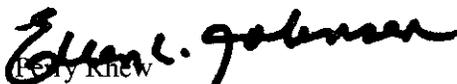
ON BEHALF OF APPLICANT:



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,



Cheryl Khew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City. The matter 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)(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. The applicant is the daughter of a U.S. citizen and 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 with her mother and son in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated April 7, 2010.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's mother has several physical and mental health conditions, is financially dependent on the applicant, and does not have any family ties outside of the United States.

The record contains, *inter alia*: a letter from the applicant; a copy of the birth certificate of the applicant's U.S. citizen son; two declarations from the applicant's mother, [REDACTED]; letters from mental health professionals and documentation from Kaiser Permanente; letters of support; copies of tax records, bills, bank account statements, and other financial documents; a copy of the U.S. Department of State's Background Note on Colombia; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 -

....

(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 Attorney General [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 this case, the record shows, and the applicant concedes, that she entered the United States in April 1986 using a visitor's visa with authorization to remain in the United States for six months. The applicant did not timely depart the United States and remained until March 2010. *Letter from [REDACTED]*, dated March 30, 2010; *Appeal and Motion to Reopen and Reconsider*, undated, at 2. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful provisions, until March 2010. Accordingly, she is 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 one year or more and seeking admission to the United States within ten years of her last departure.

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 Salcido-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 this case, the applicant’s mother, [REDACTED] states that she is sixty-two years old and disabled. [REDACTED] contends she has suffered a lot in her life. She states that her parents separated when she was two years old and that her father died when she was fifteen years old. According to [REDACTED], her mother was unable to support the family and they lived with relatives as unwanted dependents until her mother remarried. She states that her stepfather sexually molested her and that she married at the age of sixteen, without finishing high school, in order to escape from her stepfather. She states that she depended on her ex-husband completely and could not even go grocery shopping without him. She states that her husband abandoned her and their two daughters. She explains that she was unable to support her daughters, and so she sent her daughter, the applicant, to the United States to live with her mother, the applicant’s grandmother. She states that she regretted sending her daughter to the United States and decided to come to the United States herself. In addition, [REDACTED] contends she has many medical problems. She states she has a rotator cuff tear, has surgery scheduled for October of 2011, and needs her daughter to help her with bathing, dressing, driving, etc. She states that she also has hypertension, diabetes, hyperlipidemia, and Major Depressive Disorder. She states her application for government assistance and disability benefits was denied and that she has no one to take care of her or financially assist her. She contends that her other daughter, [REDACTED], cannot assist her and that she cannot rely on her sixteen year old grandson. *Declarations of [REDACTED]* dated September 7, 2011, and March 15, 2010.

After a careful review of the record, the AAO finds that the applicant's mother, [REDACTED], will suffer extreme hardship if the applicant's waiver application were denied. The record contains substantial documentation corroborating [REDACTED] claims that she has numerous medical and psychological conditions for which she is dependent upon her daughter's assistance. Documentation from Kaiser Permanente shows that [REDACTED] has several medical problems, including but not limited to, diabetes, hyperlipidemia, migraines, carpal tunnel syndrome, and hypertension. The record shows that between April and August of 2011, [REDACTED] had twenty medical appointments and that she has twenty-seven prescription medications. A letter from her physician states that she needs surgery for a torn rotator cuff and will need help with her personal care and daily activities. *Letter from [REDACTED]*, dated August 16, 2011. In addition, the record contains three letters from mental health professionals showing that [REDACTED] was diagnosed with Major Depressive Disorder and Dependent Personality Disorder. A letter from a therapist explains that [REDACTED] was sexually molested by her stepfather, married at the age of sixteen in order to get away from home, became completely dependent on her husband, and is now completely dependent on her daughter. The therapist contends that [REDACTED] is unable to manage her medical conditions, that her depression is more severe since her daughter departed the United States, and that she reported feeling suicidal. *Letters from [REDACTED]*, dated May 2, 2011, and February 16, 2010. A letter from [REDACTED] psychiatrist states that psychiatric intervention must continue because of the severity and course of [REDACTED] condition, particularly considering the violence she experienced in childhood as well as in her past relationship. *Letter from [REDACTED]*, dated June 13, 2011; *see also Letter from [REDACTED]*, dated May 2, 2011 (stating that she used to help [REDACTED] twice a week since the applicant departed the United States, but that she has moved, and that [REDACTED] is often depressed, is in constant pain from her shoulder, and is unable to keep her diabetes under control).

Furthermore, [REDACTED] appears to be completely financially dependent on the applicant. According to the most recent tax documents in the record, [REDACTED] was living with the applicant while the applicant earned \$47,950 in wages and [REDACTED] earned only \$2,790. *2009 U.S. Individual Tax Returns (Form 1040)*, dated March 11 and 13, 2010. According to [REDACTED] she continues to live in the applicant's house with her grandson, the applicant's child. *Declaration of [REDACTED]*, dated September 7, 2011. In addition, the record contains a copy of a letter from the State of California denying [REDACTED] application for disability benefits. *State of California, Employment Development Department*, dated May 26, 2011. According to the therapist, [REDACTED] reported having to call the applicant in Colombia for money to buy groceries and having to wait until the applicant tells her when she can buy groceries and how much she can spend. *Letter from [REDACTED]*, dated May 2, 2011. Considering all of the evidence in the aggregate, the AAO finds that if [REDACTED] decides to stay in the United States without her daughter, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving back to Colombia to avoid separation would be an extreme hardship for [REDACTED]. As stated above, the record shows that [REDACTED] has many medical and mental health problems for which she requires continued treatment. *See, e.g., Letter from [REDACTED]*, *supra*; *Letter from [REDACTED]*, *supra*. Relocating to Colombia would disrupt the continuity of

her health care. In addition, the AAO acknowledges that although adequate medical care can be found in major cities in Colombia, the quality of care varies greatly elsewhere, emergency rooms in Colombia are frequently overcrowded, and ambulance service can be slow. *U.S. Department of State, Country Specific Information, Colombia*, dated August 23, 2011. Moreover, the AAO takes administrative notice that the U.S. Department of State warns U.S. citizens of the dangers of travel to Colombia, recognizing that violence continues to affect rural areas as well as large cities and that terrorist activity remains a threat throughout the country. *U.S. Department of State, Travel Alert, Colombia*, dated July 22, 2011. Furthermore, according to [REDACTED] with the exception of only a few months, she has lived in the United States with her daughter for over twenty years, since 1987. *Declaration of [REDACTED]* dated March 15, 2010, and counsel contends she has not returned to Colombia since entering the United States and no longer has any family ties to Colombia. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she returned to Colombia to be with her daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States and periods of unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including her U.S. citizen mother and son; the extreme hardship to the applicant's mother and son if she were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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.

ORDER: The appeal is sustained.