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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**

[REDACTED]

H6

DATE: **OCT 03 2011** Office: PANAMA CITY, PANAMA FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

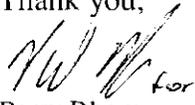
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

*Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.*

Thank you,

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office 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 Ecuador 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 her last departure from the United States. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated May 29, 2009.

On appeal, counsel asserts that the field office director committed an abuse of discretion and erred as a matter of law in denying the waiver application. *Form I-290B*, dated June 30, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, two letters from a psychologist, financial records, educational records and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on July 7, 1999 and departed the United States on September 3, 2008. The applicant accrued unlawful presence during this entire period of time. The applicant 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 more than one year and seeking readmission within ten years of her September 3, 2008 departure from the United States.

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.

....

(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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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.

Counsel states that the applicant’s spouse is 61 years old; his mother and sister live in California; he does not speak the language or understand the culture of Ecuador; he has never lived abroad; it will be hard to find a job as there are thousands of people over 40 who are unable to find employment; he worked as a customer service representative for two companies and as a realtor in the United States; and he receives retirement and health insurance benefits which covers the family. *Brief in Support of Appeal*, dated August 4, 2009. The record includes paychecks for the applicant’s spouse’s two jobs with Discover and Sears. The applicant’s spouse states that a move to Ecuador is impossible; he has found it nearly impossible to find a job in Ecuador; he is no longer able to work many manual jobs; people of his age are not employable in Ecuador; he does not have enough savings to live in Ecuador without supplemental income; the applicant has not worked other than sporadic babysitting and cleaning positions; the applicant has never worked in Ecuador and is not likely to find employment to support the family; he does not see how he could support her in Ecuador; and his health will not be that good in ten years. *Applicant’s Spouse’s Statement*, dated August 19, 2008. The record includes a letter from a consular agent in Ecuador who states that there are problems with labor workers which results in many Ecuadorians emigrating to other countries in search of better opportunities; the bad administration of the country results in poverty; and thousands of people over 40 years of age can not find work in Ecuador, resulting in more poverty. *Letter from Consular Agent*, dated May 28, 2008. The applicant’s spouse’s psychologist states that his and the applicant’s son was not able to attend school as there are no public schools in Ecuador. *Second Letter from Psychologist*, dated April 30, 2009. The applicant’s son’s teacher in the United States states that he is one of the highest achieving students in his class and is very well-adjusted socially and emotionally. *Letter from Applicant’s Son’s Teacher*, dated May 1, 2008.

The record reflects that the applicant's spouse is currently 63 years old, he does not speak Spanish and he has no ties to Ecuador. The record also indicates that the applicant's spouse is the sole income earner and that he is working at least two jobs to support himself, the applicant and their son. Further, the record indicates that the applicant's spouse would have difficulty obtaining employment in Ecuador. It does not appear likely that he could obtain employment in Ecuador. In addition, he would be raising his young child in a foreign country. The record does not establish that the applicant's son could not receive free education in Ecuador. However, the AAO notes that he is a high achieving student who has been taken out of an environment in which he thrived. When considering these factors, in addition to the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship upon relocating to Ecuador.

The applicant's spouse states that he depends on the applicant and their child for physical, emotional and mental support; he does not have family members nearby who could assist him with caring for their son; and he would be lost mentally without the applicant. *Applicant's Spouse's Statement*.

Counsel states that the applicant signed her and her spouse's child's education plans and this shows an active role in her child's life; and that hardship to their child would inevitably affect the applicant's spouse. *Brief in Support of Appeal*, dated August 4, 2009. The applicant's spouse's psychologist describes the applicant's spouse's onset of depression and anxiety caused by the impending deportation of the applicant and their child; he diagnosed him with Major Depression, single episode, moderate; and he noted that the applicant's spouse had three jobs and his work prevented him from being an on-site parent. *Letter from Psychologist*, dated August 5, 2008. In a subsequent letter, the psychologist states that the applicant's spouse had to support two households when the applicant and their son moved to Ecuador, he coped by getting high interest paycheck loans, he could not pay off these loans; and he was constantly hounded by creditors; the applicant has not been able to find employment in Ecuador; the combination of financial stressors, loss of social support and separation from family culminated in growing depression and hopelessness and the applicant's spouse attempted suicide; he was discovered by the police; and he was treated in an inpatient psychiatric hospital for about two weeks. *Second Letter from Psychologist*.

The AAO notes that there is not supporting documentary evidence of the financial hardship claims mentioned by the psychologist. However, the record reflects that the applicant's spouse is currently separated from the applicant and their child. The record further reflects that he has attempted suicide. Therefore, the AAO finds that the applicant's spouse would suffer extreme hardship upon remaining in the United States.

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 unlawful presence and entry without inspection.

The favorable factors include the presence of the applicant’s U.S. citizen spouse and child, extreme hardship to her spouse and the lack of a criminal record.

The AAO finds that the violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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) of the Act 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.