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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: OCT 26 2011 OFFICE: PANAMA CITY, PANAMA FILE: [redacted]

IN RE: APPLICANT: [redacted]

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

Thank you,

Ellen C. Johnson

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 the applicant is a native and citizen of Guyana who was last removed from the United States on March 21, 2006 pursuant to an order of removal entered on April 18, 1995. The applicant entered Puerto Rico on November 18, 1994, presenting a resident alien card which did not belong to him in the name of [redacted] He then attempted to board a flight to New York, presenting the same resident alien card. The applicant was placed in removal proceedings, posted a $10,000 bond, and failed to appear at his April 18, 1995 hearing. At that hearing, he was ordered removed to Guyana. The applicant also failed to appear before an immigration official with regard to his order of removal, forfeiting his bond. He was eventually arrested by Immigrations and Customs Enforcement, and was sent back to Guyana at government expense on March 21, 2006 where he currently resides. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through fraud or misrepresentation. He was also 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to join his U.S. Citizen spouse and children in the United States.

The Field Office Director concluded that the adverse effect of the applicant's inadmissibility on the qualifying relative does not constitute extreme hardship as it is no greater than one would expect from a prolonged absence of a loved one and denied the I-601 waiver application accordingly. *See Decision of Field Office Director* dated May 22, 2009.

On appeal, counsel for the applicant asserts the applicant's spouse experiences financial, psychological / emotional, and other hardship. *Brief in support of appeal,* July 17, 2009. Counsel explains the applicant's spouse's income is insufficient to cover the household's monthly expenses. *Id.* Moreover, counsel states the applicant's spouse is responsible for taking care of her mother, who has numerous medical conditions including congestive heart failure and is currently in the early stages of Alzheimer's disease. *Id.* Counsel additionally contends the applicant's spouse suffers from "Adjustment Disorder with Mixed Anxiety and Depressed Mood." *Id.* These psychological conditions are exacerbated by the applicant's spouse's concern about the welfare of her children, who, counsel explains, are not doing as well in school as when the applicant was present. *Id.*

The record includes, but is not limited to, birth, marriage, and naturalization certificates, affidavits from the applicant's spouse, correspondence regarding the children's education, a psychological evaluation, letters from physicians and employers, medical records, federal income tax returns,

evidence of property ownership, and mortgage statements. The entire record was reviewed and considered in rendering decisions on the appeal.

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

> (i) 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) of the Act provides:

> (1) 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 alien 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.

In the present case, the record reflects in 1994 the applicant presented a resident alien card which did not belong to him in the name of "[redacted] to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

Section 212(a)(9) 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-
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> . . . .
>
> (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.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
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> . . . .

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver.-The Attorney General 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 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 Attorney General regarding a waiver under this clause.

The record reflects the applicant was admitted to the United States in 1994, and was ordered removed in 1995. The record further reflects the applicant filed an adjustment of status application with legacy Immigration and Naturalization Service in 1995, which was denied on August 25, 2000.[1] The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy,* dated May 6, 2009. The applicant therefore accrued unlawful presence from August 26, 2000, the day after his application for adjustment of status was denied, until he departed the country on March 21, 2006.[2] The applicant has resided in Guyana since that date. The applicant is thus inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. In applying for an immigrant visa to the United States, the applicant

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[1] It is noted the unlawful presence provisions became effective on April 1, 1997. Therefore, the applicant did not accrue unlawful presence before that date.

[2] It is also noted the applicant was arrested by DHS at his home, detained for seven weeks, and then removed to Guyana on March 21, 2006 at the government's expense.

is seeking admission within 10 years of his March 21, 2006 departure. The applicant's qualifying relative in this case is his U.S. Citizen spouse.

Sections 212(i) and 212(a)(9)(B)(v) 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. 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.

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 children as a factor to be considered in assessing extreme hardship. In the present case, as set forth by counsel, the applicant's spouse is the only qualifying relative for the waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Counsel for the applicant contends the applicant's spouse suffers from extreme financial hardship due to separation from the applicant. *Brief in support of I-601 appeal,* July 17, 2009. Counsel explains, "Mrs. [redacted] income consists of her earnings at the doctor's office and the rent she collects from the upper floor of her house." *Id.* In support, the applicant's spouse attests she works "about 32-34 hours a week and earns $10 an hour." *Affidavit of applicant's spouse,* February 15, 2008. The applicant additionally submits a letter from the applicant's spouse's employer. Therein, [redacted] confirms the spouse "works from 9 a.m. to 5 p.m. Monday – Thurs[day] and occasionally on Saturdays for about 4 hours. [redacted] hourly wages are $10.00." *Letter from* [redacted] *M.D.,* undated. The applicant's spouse also receives "$1,200 per month for rent and utilities" for renting the second floor of her residence. *Affidavit of applicant's spouse,* February 15, 2008. Counsel contends when the applicant left, the household income "dropped precipitously, from a Gross Adjusted Income of $59,141 to a Gross Adjusted Income of $7,413." *Brief in support of I-601 appeal,* July 17, 2009. These figures are supported by Federal Income Tax Returns for 2005 and 2006. *See 2005 and 2006 tax forms.* The applicant's income was from his employment as "an electrician for the New York City Transit Authority." *Brief in support of I-601 appeal,* July 17, 2009. A memorandum from the New York City Transit Authority corroborates the employment, confirming he worked from "March 2001 to January 2006… as a Light Maintainer (Electrician.)" *Letter from New York City Transit,* October 19, 2006. The employer adds the applicant "responded to the 9/11 emergency at the World Trade Center disaster without hesitation" and the employer was "proud to be his manager." *Id.* The

applicant's spouse explains the applicant "has no permanent job [in Guyana], and no prospect of any employment even closely comparable to what he had in the United States." *Affidavit of applicant's spouse,* February 15, 2008. Without income from the applicant, the spouse explains she cannot meet her financial obligations with her income alone. She states her monthly expenses consist of "two mortgages, food, clothing, school expenses, and miscellaneous requirements" as well as her own "medical expenses." *Id.* The applicant's spouse details her mortgage expenses, explaining she "still owe[s] about $7,000 on the land [in Northport, FL] and pay[s] $570 a month on the mortgage." *Id.* As for her residence in Ozone Park, NY, the applicant's spouse clarifies her "current mortgage payment is now reduced to $703 a month, which is interest only, and does not include taxes and insurance. [She] make[s] separate payments of $ 799 quarterly, for taxes and one payment of $ 981 per year for insurance. Even these payments are difficult to make on [her] income." *Id.* Counsel further explains her mortgage payments on the Ozone Park, NY property will increase to "$1,742 per month on May 1, 2011." *Brief in support of I-601 appeal,* July 17, 2009. This is supported by a Federal Truth in Lending Statement. *See TIL statement,* March 27, 2006. Counsel calculates that even with her monthly mortgage payments of $703 a month, her "expenses, before paying for food, utilities, clothing, and other household disbursements, exceeds her income by approximately $220 a month." *Brief in support of I-601 appeal,* July 17, 2009.

The applicant's spouse asserts she used to work in a "full-time position at a [redacted] Store, from 1993 to 2003. [She] resigned from the position when [her] mother had open-heart surgery and double bypass surgery at Long Island Jewish Hospital, and it was necessary for [her] to stay home with [her mother]. [She] resumed work, in the doctor's office, as a receptionist, on September 5, 2006, by which time [her] mother had recovered to the point where she could be left alone in the home for a good part of the day." *Affidavit of applicant's spouse,* February 15, 2008. A letter from the spouse's mother's physician confirms her heart problems as well as other medical conditions. Therein, Dr. [redacted] states:

> This is [to] verify that [redacted] s a patient of mine. She suffers from Coronary Artery Disease, Hypertension, Osteoporosis, Chronic Renal Failure, Hyperlipidemia, Cerebral Vascular Atherosclerosis, Vertigo and congestive Heart Failure. [redacted] is post Cardiac Cath which was done on 7/24/2003, had micro-incisional cataract extract of the left eye on 10/2/2006. Due to her numerous medical conditions [redacted] is disable[d] and cannot care for herself, she needs full time care and her daughter [redacted] is her sole caretaker.

Letter from [redacted] *M.D., FACP,* October 27, 2006.[3] The applicant's spouse explains her mother has "lived with [her] since [she] came to the United States in 1993... She is in very poor health, to the point where she is considered disabled... She is able to care for herself alone

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[3] A psychological evaluation reports the mother "also is in the beginning stages of Alzheimer's disease." Psychological evaluation, June 8, 2009. However, it is unclear whether the psychologist examined or evaluated the mother, and this specific condition is not mentioned by the mother's own physician.

while in the home for periods of time but she is not able to travel by herself. [The spouse is] with her all the time except when [the spouse is] at work... [The] children, now 12 and 9 years old, are with her after school during the days [the spouse] work[s]. [The spouse is] employed in a doctor's office, only a block away from [the] home, so [the spouse] is available if any problem were to arise." *Affidavit of applicant's spouse,* February 15, 2008. The spouse contends her mother "could not return to Guyana with [her] because she requires medical care and treatment, which is available to her only here. If [the spouse] left the country, she would have to be taken in by one of [the spouse's] sisters, which would be very hard for her because [the mother] is used to being with [the spouse] and [the spouse's] children." *Id.*

The applicant's spouse also contends she worries for the applicant's health, as well as her mother's. She states: "My husband is in poor health. In September 2005, he suffered chest pains and he was taken by ambulance to North Shore University Hospital in Manhasset, NY. He was diagnosed as having a mild heart attack, and a stent was placed in a clogged artery." *Id.* A letter from North Shore University Hospital confirms he "underwent... Left coronary angiography. Right Coronary angiography. Left heart catheterization with ventriculography." *Letter from* September 29, 2005. The applicant's spouse concludes, "He continues to see a doctor in Guyana, but I am in fear that he is not receiving the type of care he would receive in this country." *Affidavit of applicant's spouse,* February 15, 2008.

In addition to caring for her mother and worrying about the applicant, counsel asserts the applicant's spouse has her own psychological issues. Counsel states, "[t]he strain caused Mrs. by her financial problems, her mother's health, and her children's mental health and academic woes, has caused own mental health to deteriorate. She was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood." *Brief in support of I-601 appeal,* July 17, 2009. This diagnosis is confirmed in a psychological evaluation by . Therein, further reports: "She has trouble focusing, concentrating, and paying attention, is persistently sad, chronically anxious, and has crying spells. As is common among many individuals suffering from depressive symptomatology, she has lost her sexual libido. She stated that she had suicidal thoughts but said she would never make suicidal gestures, because of her responsibility to her children." *Psychological evaluation,* June 8, 2009.

Besides her own psychological conditions, contends the applicant's spouse has to deal with her sons' psychological issues. With respect to the children states: "both and are experiencing depressive symptomatology from being separated from their father. In children depressive symptomatology includes failure to thrive, apathy, listlessness, and a decline in academic functioning." *Id.* It is unclear whether the children were present during the evaluation. A letter from Osmond A. Church School corroborates that "has been recommended for the After School Academic Intervention Academy based on his/her reading and math score growth for the 2007/2008 school year." *Letter from Osmond A. Church School,* September 17, 2008. An academic alert confirms he is "in danger of failing for this quarter and *needs to improve* in the areas checked off below" with check marks in the boxes for English and Science. *Letter from Osmond A. Church School,* January 7, 2009. In contrast, the school also confirms was in a program for gifted children when the applicant was in

the United States until 2007. *Letter from Osmond A. Church School,* March 16, 2007. Another psychologist, adds, "Mrs. depression is so strong that I have recommended that she speak to her physician about obtaining an antidepressant medication, as well as recommending that she seek counseling for her sons." *Letter from Ph.D.,* June 14, 2009. When faced with the choice of remaining separated or returning to Guyana with her children, reports her options are to "stay here with her children, and have all three experience a worsening of the depression that they have, or return with her sons to Guyana, and have her children lose the prospect of a promising future. In either case will experience a deepening of her depression and a worsening of her symptoms." *Id.*

The record contains sufficient evidence of substantial financial hardship. As stated by counsel, the record reflects the applicant's spouse's income consists of $1,200.00 in rent per month, as well as approximately $300.00 per week before taxes from her employment at medical practice. *See letter from M.D.,* undated, *see also affidavit of applicant's spouse,* February 15, 2008. The record further reflects the applicant's spouse currently pays $1,742.00 per month for her mortgage on the Ozone Park, NY residence, and $570 per month for the land in Florida. *See TIL statement,* March 27, 2006, *see also affidavit of applicant's spouse,* February 15, 2008. It is evident that the applicant's spouse's income is barely sufficient to cover mortgage payments on both properties, and is insufficient for payment of other monthly expenses as explained in her affidavit. Even without evidence of the other monthly household expenses, the record contains sufficient evidence to show the applicant's spouse suffers from significant financial hardship without the applicant.

In addition to financial hardship, the applicant's spouse has submitted sufficient evidence of hardship due to her responsibilities toward her mother, who suffers from "Coronary Artery Disease, Hypertension, Osteoporosis, Chronic Renal Failure, Hyperlipidemia, Cerebral Vascular Atherosclerosis, Vertigo and congestive heart failure." *See letter from FACP,* October 27, 2006. The mother's physician confirms she is disabled, and the applicant's spouse is her "sole caretaker." *Letter from M.D., FACP,* October 27, 2006. Although the Field Office Director notes with respect to the mother the applicant's spouse "has four other sisters, all residing in the United States," the applicant's spouse explains her mother has been living with her since she came to the United States in 1993, and switching to living with another sister would be difficult for her, especially given the care required for her medical conditions. *See decision of Field Office Director,* May 22, 2009, *see also affidavit of applicant's spouse,* February 15, 2008. It is therefore reasonable that, as counsel asserts, the applicant's spouse feels she would be unable to leave her mother with relatives she has not lived with recently. *Brief in support of I-601 appeal,* July 17, 2009. The AAO therefore finds the applicant's spouse also suffers from hardship due to her care for her mother, and that such care cannot simply be given over to another family member given the mother's specific conditions and the length of the mother's residence with the applicant's spouse.

Over and above the financial hardship and hardship due to the mother's health, the applicant's spouse has submitted evidence of psychological and emotional issues. The record reflects the applicant's spouse has begun individual psychotherapy treatment for her "Adjustment Disorder

with Mixed Anxiety and Depressed Mood." *See psychological evaluation,* June 8, 2009, *see also letter from* June 14, 2009. The record further indicates she has been prescribed Lexapro and Ambien for her depression. *Memo from M.D.,* June 12, 2009. The applicant has established his spouse suffers from hardship due to financial issues, her responsibilities towards her ill mother, and her own psychological conditions. When these factors are considered cumulatively, the record reflects the applicant has established his spouse would suffer from extreme hardship upon separation from the applicant.

There is also sufficient evidence to show the applicant's spouse would suffer extreme hardship upon relocation to Guyana. As discussed above, upon relocation the applicant's spouse would have to leave her mother, who has serious medical conditions, in the care of other relatives who have not lived with her since before 1993. *Affidavit of applicant's spouse,* February 15, 2008. The applicant's spouse's contention that there is not sufficient medical care for her mother in Guyana is supported by the U.S. Department of State. The Department of State reports:

> Medical care in Guyana does not meet U.S. standards. Care is available for minor medical conditions, although quality is very inconsistent. Emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation. There are very few ambulances in Guyana. Ambulance service is limited to transportation without any medical care and is frequently not available for emergencies.

U.S. Department of State, Country Specific Information: Guyana, January 11, 2011. Moreover, the applicant's spouse would have difficulties finding adequate care for her own psychological conditions, which, according to would add to the psychological hardship upon relocation and would result in a "deepening of her depression and a worsening of her symptoms." *Letter from* June 14, 2009. Furthermore, the applicant's spouse's immediate family, besides the applicant, is mainly in the United States, and relocation to Guyana would separate her from her family. The applicant's spouse also expresses concern over her sons and the life they would lead in Guyana. *Affidavit of applicant's spouse,* February 15, 2008. Despite the spouse's assertions on the applicant's unemployment, there is little supporting evidence on whether the applicant or his spouse could find employment in Guyana. Nevertheless, the AAO notes in Guyana the "legal minimum wage did not provide a decent standard of living for a worker and family." *U.S. Department of State Human Rights Report: Guyana,* April 8, 2011. When all these factors are considered in the aggregate, the AAO also finds the applicant's spouse would suffer from extreme hardship upon relocation to Guyana.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 include the extreme hardship to the applicant's spouse, the applicant's moral character as shown by his lack of a criminal record, property and family ties in the United States, and the applicant's service to the community as a responder to the 9/11 emergency at the World Trade Center. The unfavorable factors include the applicant's misrepresentation, his failure to appear before immigration officials, his significant unlawful presence after being ordered removed, and removal at the government's expense.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal of the I-601 denial will be sustained.

ORDER: The appeal is sustained.