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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: **APR 24 2012**

Office: PANAMA CITY

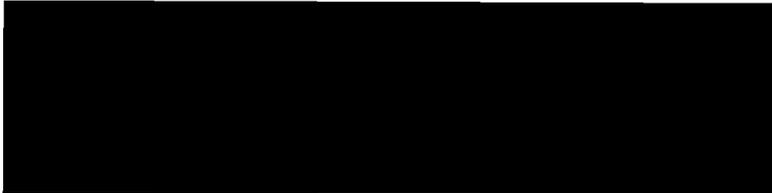


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

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

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Venezuela, lawfully entered the United States with a B1/B2 visa on August 18, 2000, but overstayed her period of admission. The applicant was thus 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 one year or more. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, January 25, 2010.

In support of the appeal, counsel submits documents including a copy of a U.S. passport, immunization/medical records, and a WIC program appointment calendar. The entire record, including supporting documentation for the applicant's Form I-601, was reviewed and considered in rendering this decision.

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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen

husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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

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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 for the applicant's husband contends that the USCIS decision is clearly erroneous for relying on incorrect facts leading to misapplication of the law. According to the record, the applicant entered the United States as a visitor with a B1/B2 visa on August 18, 2000 and was admitted until February 18, 2001. However, without obtaining an extension of stay, she remained until August 11, 2008, when she returned to Venezuela to attend a consular interview for an immigrant visa. This departure triggered the 10 year bar under section 212(a)(9)(B)(i)(II) of the Act, as the applicant had been unlawfully present for more than one year.

The applicant's husband contends that he will continue to suffer stress and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. He and his counsel claim that separation from his wife and relocation to Venezuela are equally untenable options. *Statement of* ██████████ November 20, 2008.

The record contains a psychological evaluation of the qualifying relative concluding that he needs medication and psychotherapy for depression stemming from family separation. While the treating physician notes symptoms including crying spells, insomnia, loss of appetite, and difficulty concentrating, he fails to explain whether they were observed clinically or reported by the patient. The evaluation does not discuss any tests conducted or medications prescribed, or note whether the applicant's husband sought recommended therapy. No evidence is provided that these conditions had an adverse impact on the applicant's husband's job performance. The record reflects that the qualifying relative has become, in his wife's absence, a single parent to their five year old child; further, to maintain his job, the applicant reports, her husband has hired a nanny to care for the child during his workday. This circumstance is not unlike that of other parents who need to balance work and childrearing. Nor has it been established that the applicant's husband is unable to travel to Venezuela to visit his wife to ease the pain of separation. Further, the qualifying relative's assertion that his emotional problems would be solved by reuniting with his wife does not indicate any reason this reunion cannot occur in Venezuela.

As for the financial hardship referenced, the record contains no documentation of the qualifying relative's employment or income besides an employment listing on his biographic information form. The record is silent as to his income or the family's overall economic situation, except where the applicant notes having gotten a job in Venezuela to avoid burdening her husband with supporting her overseas. Without documentation of the applicant's and her husband's income and expenses, the record contains insufficient evidence to establish that without the applicant's physical presence in

the United States, a qualifying relative is experiencing financial hardship. Similarly lacking is any evidence to support the suggestion that their child must remain in the United States with the applicant's husband to retain access to medical care and is unable to reside in Venezuela with the applicant. The assertion that hardship to a child due to an absent parent represents hardship to a qualifying relative must be supported by evidence that it would be untenable for the child to live with the applicant.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant and, further, that removing a child's caretaker from the home imposes a burden on a her husband. However, his situation, if he remains in the United States, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

Regarding the claimed hardship to be incurred upon relocating abroad to reside with the applicant, the record does not contain evidence satisfying the applicant's burden of proof. First, the record contains scant information regarding the qualifying relative's U.S. ties other than a reference to employment in letters submitted with the waiver application. Second, we note no evidence of his income, either in the United States or in the Dominican Republic, prior to his emigration from that country. Third, the applicant does not assert any reason – e.g., any medical issues, local conditions, etc. -- that either her husband or their child cannot relocate to join her. Finally, the record is silent regarding his job prospects in Venezuela, although we note that the applicant herself is currently employed there.

Regarding the fact that the applicant lives in Venezuela, while her husband is from the Dominican Republic, the applicant bears the burden of showing that relocation to Venezuela would represent extreme hardship to a qualifying relative. Counsel is correct that there is no record evidence that the applicant's husband would be allowed to join the applicant in her native country. However, it is the applicant's burden to show that moving to Venezuela would be so difficult – for whatever reason, including inability to satisfy host country immigration procedures -- as to represent a hardship that would be extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.