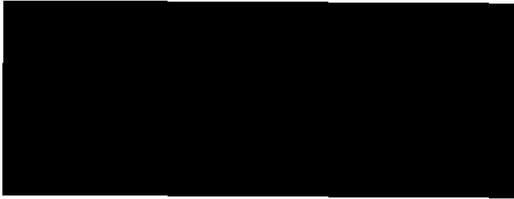




U.S. Citizenship
and Immigration
Services



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DATE: DEC 05 2012 OFFICE: PANAMA CITY

FILE: 

IN RE: 

APPLICATION: 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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 dismissed.

The applicant is a 45 year-old 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 and seeking readmission within 10 years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated July 28, 2011.

On appeal, the applicant asserts that she has demonstrated that her spouse, his children, and her spouse's parents are suffering extreme hardship because her waiver of inadmissibility was denied.

In support of the waiver application and appeal, the applicant submitted documentation concerning a car accident involving her spouse, documentation concerning her employment and medical issues, letters of support, documentation concerning her spouse's employment, country conditions concerning Colombia, a letter from her spouse, and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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 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 applicant is a native and citizen of Colombia who entered the United States pursuant to a B-2 visa on August 8, 2000. The applicant was authorized to remain in the United States for six months. The applicant remained in the United States beyond her authorized stay until her departure on September 1, 2005. The applicant accrued unlawful presence in the United States from the date that her authorization to remain in the United States terminated until her departure on September 1, 2005. As she accrued over one year of unlawful presence in the United States and she now seeks readmission, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

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 or her parents-in-law can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Morales*, 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-I-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 reflects that the applicant is a 45 year-old native and citizen of Colombia. The applicant’s spouse is a 52 year-old native and citizen of the United States. The applicant is currently residing in Colombia and her spouse is currently residing in Hialeah, Florida.

The applicant asserts that her husband and parents-in-law are suffering from severe clinical depression and their conditions are aggravated by the separation of the applicant and her spouse. It is also noted that the record does not contain any medical documentation supporting the applicant’s assertions that her spouse and parents-in-law are suffering from any psychological ailments.

The applicant’s spouse asserts that thinking about the applicant makes it hard for him to sleep and that this lack of sleep causes irritability and difficulty concentrating. The applicant’s

spouse's parents submitted two nearly identical letters, dated October 1, 2010 and August 24, 2011, stating that the applicant's spouse has exhibited mild forms of depression, problems performing at work, and irritability from lack of sleep. It is noted that the applicant's spouse's parents make no allegations concerning their own psychological well-being. It is also noted that the record does not contain any information from the applicant's spouse's employer indicating that he is having any difficulties performing his duties. The applicant also contends that her husband's mental health has deteriorated to the extent that he attempted suicide by purposefully crashing his car because of separation from the applicant. The applicant submitted documentation concerning her spouse's car accident, which took place on December 14, 2010. A law enforcement report indicates that another driver, not the applicant's spouse, was cited for careless driving for changing lanes and striking the applicant's spouse's vehicle. The evidence in the record contradicts the applicant's claim and diminishes the weight given to her assertions in this matter.

The applicant's spouse asserts that he would like to have a child with the applicant, but that the Colombian health care system would be inadequate for the applicant if she faced a risky pregnancy, due to her age. The applicant's spouse's concerns are speculative in nature as there is no evidence that the applicant is pregnant or facing a risky pregnancy. Further, the U.S. Department of State report on conditions in Colombia, included in the record, indicates that medical care is adequate in major cities in Colombia. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record demonstrates that the applicant's spouse is suffering emotional hardship in the absence of the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse is suffering from a level of hardship beyond the common results of separation from a spouse.

The applicant's spouse asserts that he cannot relocate to Colombia because he would be leaving behind his ties in the United States. The applicant's spouse also asserts that he would be leaving the United States for a country where he would fear for his safety and his financial security. The applicant's spouse asserts that he resides with his parents in the United States, which allows him to take care of them, as necessary. The applicant's spouse states that he would like to remain in the United States and continue to take care of his parents as they age. It is noted that the record contains letters of support submitted by the applicant's spouse's parents.

The applicant's spouse asserts that he works as a referee and is a member of the Navy reserves, which requires him to report to the reserve for one weekend a month, participate in training, and be available to serve at any moment. The record contains employment documents supporting the applicant's spouse's assertions concerning his reserve responsibilities. The applicant's spouse's reenlistment contract indicates that he is enlisted in the United States Naval Reserve with an expiration date of July 12, 2014. The applicant's spouse's contract further indicates that he may be ordered to active duty for any war or national emergency declared by Congress.

The applicant's spouse contends that he is also concerned about relocating to Colombia because of the current country conditions. It is noted that the Department of State travel warning for Colombia, dated October 3, 2012, indicates that terrorist and criminal activities remain a threat

throughout this country. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Colombia.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.