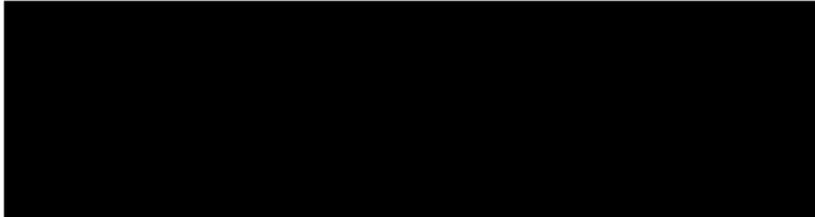


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

Date: DEC 24 2012

Office: PANAMA CITY

FILE:



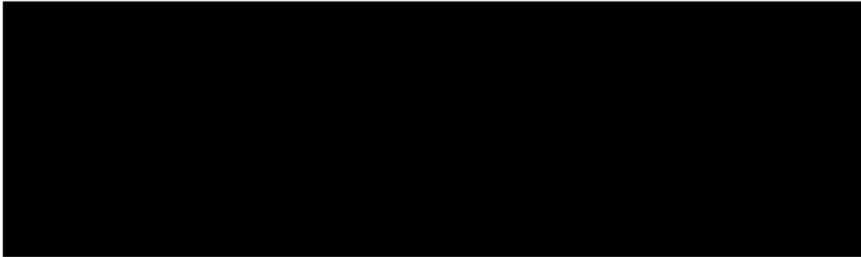
IN RE:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting 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 Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act 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 in order to reside with her mother 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.

On appeal, counsel contends the applicant's mother has recently been diagnosed with Post Traumatic Stress Disorder and Major Depressive Disorder. Counsel also contends the applicant's mother is suffering great financial hardship and cannot return to Ecuador. Counsel submits additional supporting documents.

The record contains, *inter alia*: a letter from the applicant; letters from the applicant's mother. [REDACTED] a psychological evaluation; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Human Rights Report for Ecuador; letters of support; and a DNA test report. 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 does not contest, that she entered the United States using a visitor's visa in October 2001 and had authorization to remain in the United States until July 2002. The applicant remained in the United States beyond her authorized stay until her departure in November 2007. Accordingly, 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 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 as a very young girl in Ecuador, she was forcibly and brutally raped by her father. She states that her father terrorized her, manipulated her, constantly threatened her with harm, humiliated her with insults, and made her feel guilty and shameful for what he had done. According to [REDACTED] she was even more terrified when she learned she was pregnant at the age of fifteen. [REDACTED] contends that she gave birth to her daughter, the applicant, but that her parents registered the baby as their own child. She states that she was condemned to a life of hell, living alongside her child while being forbidden to tell her that she was actually her mother and not her sister. [REDACTED] states that she wanted to tell her daughter the truth, but could not do so for fear that her father would harm her daughter. [REDACTED] states that the pain of being the victim of incestuous rape and then being robbed of being a mother to her child was so unbearable that she left Ecuador to escape the hell she was living. She states she came to the United States, swearing that she would work up the courage to tell her daughter the truth. She states that after she became a U.S. citizen, she immediately filed a Petition for Alien Relative (Form I-130) on her daughter's behalf, claiming her as a sister of a U.S. citizen. [REDACTED] states that her daughter visited her in the United States in 2001 with her own daughter, [REDACTED] granddaughter. According to [REDACTED], it was the very first time she had ever been alone with her daughter, without the threatening presence of her family in Ecuador. [REDACTED] contends she wanted to tell her the truth, but that she succumbed to her fears, maintaining her silence. She states that when her daughter's authorized stay was about to expire, she suffered an emotional breakdown. She claims she could not bear the pain of being separated from her daughter again and begged her to stay, which she did until 2007. [REDACTED] states that in November 2008, when her daughter had her interview for the Form I-130, the consulate determined she was not eligible for a visa because of her previous overstay. With no qualifying relative for a waiver, the applicant went home and cried desperately to her grandmother, at which point her grandmother told the applicant the truth about [REDACTED] being her mother, and not her sister. According to [REDACTED] she is hopeful to be reunited with her daughter. Furthermore, [REDACTED] states she cannot return to Ecuador. She states she cannot go back to a place that holds only horrifying and haunting memories for her. She states she has anxiety and that her home life has become unbearable due to her nervous condition. In addition,

██████████ states she would be forced to abandon her husband of twenty-two years, who is her best friend, partner, and support. She states her husband is a native of Syria, has lived in the United States for over fifty years, has never lived in Ecuador, and is seventy-eight years old. ██████████ also contends she would be forced to abandon her two other children and her grandchildren whom she sees every day.

After a careful review of the entire record, the AAO finds that if ██████████ remains in the United States without her daughter, she will continue to suffer extreme hardship. The record contains ample documentation corroborating ██████████ claims that she was raped by her father, became pregnant with the applicant at the age of fifteen, and was forced to hide the truth about being the applicant's mother for over forty years. The record contains DNA test results establishing that ██████████ is the applicant's mother with a 99.9998% degree of certainty. A psychological evaluation in the record describes the severity of ██████████ mental health problems and diagnoses her with Major Depressive Disorder, Recurrent and Severe with Psychotic Features, and Post Traumatic Stress Disorder, Chronic. The therapist describes ██████████ symptoms including auditory hallucinations multiple times per week and a history of suicidal ideations and thoughts, to the extent that ██████████ husband reportedly hides all of the knives in the house. According to the therapist, ██████████ has been making only minimal progress due to the severity of her symptoms which will likely continue to deteriorate without the emotional support of her daughter. Moreover, the therapist describes how terrified ██████████ was to tell her husband the truth about what her father did to her. ██████████ was afraid that people would blame her and reject her for what happened, as her family in Ecuador had done. According to the therapist, ██████████ did not previously have problems with her husband, but now they are experiencing constant marital discord due to the trauma and depressive symptoms ██████████ has been experiencing. ██████████ husband reported having spoken with a divorce lawyer because he "can't continue to live like this" and does not know what else to do. Considering these unique circumstances cumulatively, the AAO finds that the effect of separation from the applicant on ██████████ is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if ██████████ returned to Ecuador to be with her daughter, she would experience extreme hardship. As stated above, ██████████ experienced significant trauma as a child in Ecuador. According to her therapist, it would be unreasonable to ask ██████████ to return to Ecuador considering the severe sexual abuse she experienced there and her return to Ecuador would compound her trauma. The therapist concludes that "relocation to Ecuador is out of the question" In addition, the AAO recognizes that ██████████ has lived in the United States for almost forty years and has been married to her husband for over twenty years. ██████████ would need to leave her husband, children, and grandchildren if she were to return to Ecuador, and would also need to readjust to living in Ecuador, a difficult situation made even more complicated given the history of abuse she endured in Ecuador. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that ██████████ 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 includes the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen mother and step-father; the extreme hardship to the applicant's mother if she were refused admission; a letter of support signed by numerous individuals attesting to the applicant's character; and the applicant's lack of any arrests or criminal convictions.

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.