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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: **JAN 03 2012**

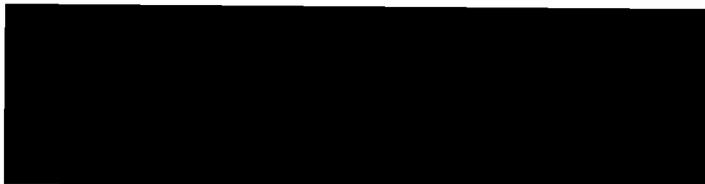
Office: PANAMA CITY

FILE: 

IN RE: Applicant: 

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:



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,

for

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 and the waiver application will be approved.

The applicant is a 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 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated July 7, 2011, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 7, 2011.

On appeal, the applicant's attorney contends that the qualifying spouse is suffering emotional, psychological and medical hardships due to his separation from the applicant. Further, the applicant's attorney asserts that the qualifying spouse cannot travel to Colombia due to safety concerns and cannot relocate there because he wants to continue his medical care with his treating physicians in the United States. The qualifying spouse also states that he would lose his employment if he traveled to Colombia to visit the applicant.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal letter from the applicant's attorney, letters from the qualifying spouse and applicant, photographs, a psychological evaluation, letters from the qualifying spouse's doctors, medical records for the qualifying spouse, country condition materials, a birth certificate for the applicant and qualifying spouse's son, an approved Petition for Alien Relative (Form I-130) and an application for an immigrant visa with the documentation submitted in conjunction with the applications.

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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's 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 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 applicant’s qualifying relative in this case is her husband, who is a lawful permanent resident. The record indicates that the applicant entered the United States on May 10, 2000 with a visitor’s visa and remained until June 2010, when she voluntarily departed. The applicant accrued unlawful presence from November 9, 2000, when her authorized stay expired, until June 2010 when she voluntarily departed, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The record contains Form I-601, Form I-290B, an appeal letter from the applicant’s attorney, letters from the qualifying spouse and applicant, a psychological evaluation, letters from the qualifying spouse’s doctors, medical records for the qualifying spouse, country condition materials and a birth certificate for the applicant and qualifying spouse’s son.

As previously stated, the applicant’s attorney contends that the qualifying spouse is suffering emotional, psychological and medical hardships due to his separation from the applicant. Further, the applicant’s attorney asserts that the qualifying spouse cannot travel to Colombia due to safety concerns and cannot relocate there because he wants to continue his medical care with his treating physicians in the United States. The qualifying spouse also states that he would lose his employment if he traveled to Colombia to visit the applicant.

The applicant's attorney asserts that the qualifying spouse is suffering emotional and psychological hardships as a result of his separation from the applicant. The record contains psychological evaluations, letters from doctors indicating prescribed medications for his psychological issues, and letters from the qualifying spouse. The record demonstrates that the qualifying spouse has severe issues with anxiety, and has been prescribed medications for his anxiety, as well as his depression, stress and mood problems. The psychological evaluation also indicates that due to the qualifying spouse's anxiety, he has failed to undergo required medical procedures because he fears doing so without his wife being present. Further, the psychological evaluation indicates that the qualifying spouse's mental condition would likely deteriorate if the applicant and their son were unable to return to the United States. Based on the evidence on the record, the qualifying spouse is suffering emotional and psychological hardships without the support from the applicant and due to his separation from her.

With regard to the qualifying spouse's medical hardship, the applicant's attorney contends that the qualifying spouse is struggling from various medical issues that pose a hardship to him. The record contains letters from the qualifying spouse, letters from the qualifying spouse's doctors and medical records. The evidence indicates that the qualifying spouse suffers from hypertension, anxiety and dyslipidemia, and that he takes various medications for these illnesses. One of the doctor's letters indicates that his high blood pressure is "uncontrollable" and that he is at serious risk for complications such as a heart attack or stroke. There is also documentation demonstrating that he had to undergo a heart procedure after experiencing chest pain. As such, when considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional, psychological and medical hardships demonstrate that he will suffer extreme hardship if he were to remain in the United States without the applicant.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that he relocated to Colombia with the applicant. The qualifying spouse has been a lawful permanent resident since 1980 and has lived here for over 30 years. The record also indicates that the qualifying spouse is a native of Cuba, and has no relatives in Colombia. Moreover, the qualifying spouse, in one of his letters, indicates the applicant has been having a difficult time supporting herself in Colombia and has not received any help from friends or family. Moreover, the applicant and qualifying spouse's child is a United States citizen. The record also contains evidence that the qualifying spouse has another United States citizen child for which he pays half for any medical bills and insurance. The record contains a birth certificate for the applicant and qualifying spouse's child, and divorce documentation for the qualifying spouse's prior marriage confirming his responsibilities to his other United States citizen child. Further, as aforementioned, the applicant's attorney indicates that the qualifying spouse has medical issues and is undergoing treatment in the United States for his problems. The record contains proof that the qualifying spouse suffers from chronic medical illnesses requiring medications, and that he is also taking medications for his psychological issues. In addition, there is medical documentation demonstrating that the qualifying spouse has undergone medical procedures for his heart and may require medical assistance in the future. It is clear that the qualifying spouse has been treated by multiple physicians in the United States for his various medical issues, and would face a hardship if he were unable to continue his treatment with them. In addition, the qualifying spouse in his letters raises his concerns regarding

the country conditions in Colombia, the availability of healthcare and employment. The record contains country condition materials regarding Colombia to support his assertions. The AAO concludes that, were the applicant's spouse to relocate to Colombia to be with the applicant, he would suffer extreme hardship due to his length of residence in the United States, his ties to the United States, and his potential medical and financial hardships.

Considered in the aggregate, the applicant has established that her husband 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 her 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.

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 relief must bring forward to establish that she 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 in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, and the applicant's support from the qualifying spouse and her apparent lack of a criminal record. The unfavorable factors in this matter is the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.