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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**

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Date: **JAN 03 2012** office: PANAMA CITY, PANAMA FILE:

IN RE: Applicant:

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:

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,

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 that 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 seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen and is the mother of two lawful permanent resident children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 28, 2011.

On appeal, the applicant, through counsel, asserts United States Citizenship and Immigration Services (USCIS) "erred in denying the I-601 waiver application for [the applicant] by failing to consider all evidence in the aggregate, by failing to review all evidence and documentation on record, and by applying an erroneous standard in deciding whether 'extreme' hardship exists in this case." *Form I-290B*, filed August 25, 2011.

The record includes, but is not limited to, counsel's statement on appeal; a memo from counsel; statements from the applicant and her husband; school records for the applicant, her husband, and her children; bank statements, insurance documents, tax documents, and household bills; employment verification and an earnings statement for the applicant's husband; residency documents for the applicant's children; divorce documents for the applicant's previous marriages; and travel warnings for Colombia. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
 -
- (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 [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 the present case, the record indicates that the applicant entered the United States on September 1, 2001 on a B-1/B-2 nonimmigrant visa, with authorization to remain in the United States not to exceed six (6) months. On December 29, 2004, the applicant departed the United States.

The applicant accrued unlawful presence from March 2, 2002, the day after her authorization to remain in the United States expired, until December 29, 2004, when she departed the United States. The applicant is seeking admission into the United States within ten years of her December 29, 2004 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of her departure from the United States.

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 children can be considered only insofar as it results in hardship to a qualifying relative. 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-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 of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. 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 counsel’s undated memo, counsel states the applicant’s husband’s family resides in the United States, and if he moved to Colombia, he would lose his retirement money. On appeal, counsel states that in Colombia, the applicant’s husband would be unemployed and would suffer economic hardship. In an undated statement, the applicant’s husband states he has “inquired into the possibility of obtaining employment in Colombia” and the responses he has received were that “there were no positions available for [him].” He states that “according with Colombia law, [he] would need to work 1 year as a trainee physician in order to get a certification, but there are not even openings for that. The salary is \$500.- per month.” The AAO notes that the applicant submitted the Colombian law on healthcare professionals, which supports the applicant’s husband’s claim. The applicant’s husband states the applicant would have to support him, which she could not do because she has been looking for employment for the last six years. In a statement dated October 12, 2010, the applicant states if the applicant returns to Colombia, they “would become a family of very low economic resources, bordering on poverty and with a high level of physical and psychological suffering and hardship.” The AAO notes the applicant’s husband concerns regarding the difficulties he would face in relocating to Colombia.

Counsel claims that the applicant’s husband passed his medical boards in the United States and he would have to give up his medical career to move to Colombia. Counsel states the applicant’s husband “has

worked too hard his whole life to just abandon everything.” In a statement dated October 20, 2008, the applicant’s husband states he “cannot go back to live in Colombia. [He] [has] worked too hard to finally be able to practice as a physician in the United States.” The applicant’s husband states he is a qualified medical doctor but it “is extremely difficult to find a job, in the current economic climate.” He states that he needs to keep applying for jobs, and “[o]nce [he] leave[s] the United States, [he] will be outside of the circuit, with no relevant job experience, no contacts to rely on, no knowledge as to updated residency availability, and therefore, no chance to get in.” He claims that “[l]iving in Colombia will make it practically impossible for [him] to apply.” The applicant’s husband states that if he cannot apply for the residency positions, “it is highly unlikely that [he] will ever be hired as a physician. In order to apply for these positions [he] will need to be in the United States.” The AAO notes the applicant’s husband’s employment concerns.

In a statement dated October 20, 2008, the applicant’s husband states his stepchildren “deserve the great opportunity that the United States may offer to them.” Counsel states the applicant’s children are now residing in the United States and to require the applicant’s husband to “abandon these children” “would in and of itself be extreme hardship.” The AAO notes that the record establishes that the applicant’s children became lawful permanent residents of the United States on August 19, 2011. In counsel’s undated memo, counsel states that if the applicant’s children return to Colombia, they risk losing their residency in the United States. The AAO acknowledges that the applicant’s children may suffer some hardship in returning to Colombia; however, the AAO notes that the applicant’s children are not qualifying relatives, and the applicant has not shown that they will experience challenges that elevate her husband’s difficulty to an extreme hardship. However, the AAO notes the concerns for the applicant’s children.

Counsel states that the United States government has issued a travel warning for Colombia. The AAO notes that in a travel warning issued on July 22, 2011, the U.S. Department of State warns United States citizens of the dangers of traveling to Colombia. The U.S. Department of State reports that while “[s]ecurity in Colombia has improved significantly in recent years, including in tourist and business travel destinations..., but violence by narco-terrorist groups continues to affect some rural areas and large cities.” *U.S. Department of State, Travel Warning – Colombia*, dated July 22, 2011. Additionally, the U.S. Department of State notes that “[t]errorist activity remains a threat throughout the country.... While the Embassy possesses no information concerning specific and credible threats against U.S. citizens in Colombia, [the U.S. Department of State] strongly encourage [travelers] to exercise caution and remain vigilant.” *Id.* Counsel states that as a doctor, the applicant’s husband faces “an increased risk of being kidnaped in Colombia.” The U.S. Department of State notes that “[n]o one is immune from kidnapping on the basis of occupation, nationality, or other factors. Kidnapping remains a serious threat.” *U.S. Department of State, Travel Warning – Colombia, supra.* The AAO notes the general safety issues in Colombia.

The AAO acknowledges that the applicant’s husband has been residing in the United States for many years and that he may experience some hardship in relocating to Colombia. Based on the record as a whole including the applicant’s spouse’s lack of ties to Colombia, the security concerns in Colombia, his separation from his family in the United States, financial issues including losing his employment in the United States, employment issues in Colombia, and the disruption of the children’s education in the

ORDER: The appeal is sustained. The waiver application is approved.