identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

U.S. Citizenship and Immigration Services

PUBLIC COPY

#6

DATE: MAY 2 4 2012 OFFICE: PANAMA CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Ellen C. Johnson

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 applicant a native and citizen of Guyana was found inadmissible under 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 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 U.S. citizen husband and U.S. lawful permanent resident mother.

In a decision dated March 2, 2010 the Field Office Director concluded that the applicant did not meet her burden of proof to illustrate that her U.S. citizen spouse or U.S. lawful permanent resident mother would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the evidence illustrates that the applicant's U.S. citizen spouse and U.S. lawful permanent resident mother will, in fact, suffer from extreme hardship if they remain separated from the applicant or if they were to relocate to Guyana to reside with the applicant.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, an affidavit from the applicant's spouse, documentation regarding the applicant's spouse's financial situation, medical records for the applicant's daughter, school records for the applicant's daughter, country conditions reports on Guyana, an assessment of the applicant's spouse and daughter by a mental health counselor, a letter from the applicant's mother, medical documentation regarding the applicant's mother, letters from family and friends of the applicant's spouse, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act 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 reports that she entered the United States without inspection sometime in June 2001 and remained in the United States unlawfully through January 2009. The applicant accrued one year or more of unlawful presence and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen and the daughter of a U.S. lawful permanent resident. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to one of her qualifying relatives. Hardship to the applicant or the applicant's U.S. citizen daughter is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 deportation, 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, 885 (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 has two qualifying relatives. The applicant's first qualifying relative is her U.S. citizen spouse. On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is not admitted to the United States. The applicant's spouse claims emotional, physical, and financial hardship if he remains separated from the applicant. The applicant's spouse's hardship is based primarily on the cumulative hardship that he is suffering and will continue to suffer in the applicant's absence as a result of his attempts to raise his now 8-year-old daughter in New York City without the benefit of the role that the applicant played in caring for the family and the affairs of the home before her departure. The record indicates that the applicant's spouse earns $12.50 an hour and works 40 hours a week as a

prep cook. In addition to supporting himself and his daughter, the record indicates that the applicant's spouse has sent an average of $300 per month to the applicant in Guyana. The applicant's spouse submitted documentation that he took out a $5,000 loan to cover the additional expenses that he has incurred as a result of the applicant's absence. The applicant's spouse also states that he is suffering emotional hardship due to his worries about the applicant and the high incidence of crime in Guyana, as illustrated in the country conditions reports submitted into the record. The applicant's spouse also states that he is suffering emotional hardship as a result of the medical, emotional, and educational hardships that his daughter has suffered since the applicant's absence. The record indicates that the applicant's daughter has been to the emergency room for stomach problems on three occasions since the applicant's departure. A letter from dated April 9, 2010, states that the applicant's young daughter has suffered from "tremendous distress" since the applicant's departure, including abdominal complaints and headaches that have affected her ability to concentrate and perform at school. As a result, the record indicates that the applicant's daughter has been referred for counseling at her elementary school. An assessment by dated April 10, 2010, indicates that the applicant's spouse reports that prior to the applicant's departure the applicant was the primary caretaker for her and her husband's U.S. citizen child and that she provided emotional and logistical support for her husband. This statement is supported by letters in the record from family, friends, and members of the community. Psychological testing by indicates that the applicant's spouse is suffering from severe anxiety and depression as result of separation from the applicant and the resulting stress on their daughter. Although the record indicates that the applicant's spouse has been able to benefit from the support of his parents in the care of his daughter, the records indicates that his parents are in their late 60s and are unable to meet the demands of caring for a young child on a daily basis. The record also contains country conditions reports on Guyana that indicate that "serious crime, including murder and armed robbery, continue to be a major problem" in Guyana. The AAO finds that it is reasonable that the applicant's spouse would fear for his wife's health and safety while she is residing in that country. All stated elements of hardship must be considered in aggregate to determine if the applicant's spouse will endure extreme hardship. While no single factor reaches an extreme level, the applicant has shown that the totality of her spouse's experience in the United States without her constitutes extreme hardship.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to Guyana with the applicant, the evidence, in the aggregate, also shows that the hardship that would be experienced by the applicant's spouse in that circumstance would be extreme. The record in indicates that the applicant's spouse is a native of the Dominican Republic, has resided in the United States for over a decade, and has very close family ties in the United States. A letter from indicates that the applicant's spouse has been a "reliable, honest employee and has been working at for approximately "three and half years," where in contrast the applicant's spouse reports that the applicant has been unable to find employment in Guyana. The record indicates that the per capita income in Guyana is $3,800.00. The applicant's spouse states that in addition to worries that he would not be able to find employment in Guyana to provide for himself and his family, his worry for the health and safety of his daughter prevents him from relocating there. The applicant's spouse reports that his daughter has suffered from

stomach problems since her visit to Guyana to see her mother. As stated above, the record indicates that the applicant's daughter has been to the emergency room on three occasions in 2010. Due to the documented economic situation in Guyana and the applicant's spouse's work history as a prep cook, the record establishes that the applicant's spouse would likely face economic challenges there consistent with his claims. Furthermore, the record illustrates that the applicant's spouse's concern for his and his family's personal safety in Guyana is supported by the country conditions reports in the record that illustrate a high incidence of violent crime in Guyana.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship. As we have found extreme hardship to one of the applicant's qualifying relatives, we do not need to analyze the hardship to the applicant's other qualifying relative, her. U.S. lawful permanent resident mother.

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 his 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 must bring forward to establish a favorable exercise of

administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility 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 extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in Guyana, regardless of whether he accompanied the applicant or remained in the United States, the applicant's community and family ties in the United States, the letters from community members that illustrate the important role that the applicant played in the life of her family in the United States, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's initial entry into the United States without inspection and her period of unlawful presence in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the INA, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.