

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: NOV 01 2012

Office: MEXICO CITY (PANAMA)

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 (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, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The district director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on a motion to reopen. The motion will be granted and the underlying application approved.

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, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a lawful permanent resident and 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 with her husband and children in the United States.

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.

The record indicates, and the applicant does not contest, that she entered the United States in 1994 without inspection. In October 1997, the applicant was served with a Notice to Appear and placed in removal proceedings. The applicant was granted voluntary departure until May 1, 1998, with an alternate order of removal. The applicant did not timely depart the United States and remained until June 27, 2007. The applicant accrued unlawful presence of more than one year, from May 2, 1998, until she departed the United States on June 27, 2007. She now seeks admission within ten years of her June 2007 departure. Accordingly, she is inadmissible 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.

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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of

separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In her decision, dated August 6, 2008, the district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. On appeal, counsel contended the applicant established the requisite hardship and submitted documentation to support this contention.

The hardship evidence on appeal included: a copy of the marriage certificate of the applicant and her husband, indicating they were married on August 8, 1993; letters from the applicant's spouse; copies of the birth certificates of the couple's two U.S. citizen daughters; letters from the daughters' physicians and copies of medical records; psychological reports for the couple's daughters; documents from the daughters' school; letters from the daughters; and letters of support.

In its previous decision, dated January 10, 2011, the AAO found that there was insufficient evidence to show that the applicant's spouse has suffered or would suffer extreme hardship if his wife's waiver application were denied. More specifically, we found that aside from stating that his job in the United States is very good and allows for him to support his family, the applicant's spouse did not discuss the possibility of moving back to Ecuador, where he was born and where he married the applicant, to avoid the hardship of separation and he did not address whether such a move would represent a hardship to him.

Regarding the applicant's daughter's epilepsy, the AAO found that there was insufficient evidence in the record to show that the applicant's daughter's epilepsy caused extreme hardship to the applicant's spouse. We found that although the evidence in the record substantiated the claim that the applicant's daughter has epileptic seizures, the letters from her physicians failed to provide sufficient details (i.e.: the prognosis, treatment, or severity of the epilepsy). We found further that there was no indication that the applicant's daughter was limited in her daily activities, required her father's assistance, or that she was not receiving adequate medical care and treatment in Ecuador.

Similarly, the AAO found, with respect to the psychological evaluations submitted as part of the record, that although the psychologists contended that the couple's two daughters were experiencing sadness, anxiety, and difficulties in school, there were insufficient details to show extreme hardship to the applicant's spouse. The psychologists failed to address whether the girls' mental health might improve if the applicant's spouse moved back to Ecuador to be with his family. In addition, the documentation from the psychologists failed to provide specific details showing that the girls' experience is any more difficult than would normally be expected under the circumstances.

Finally, the AAO found that to the extent the applicant's spouse contended he suffered extreme emotional hardship, there was no evidence his hardship was any more difficult than would normally be expected under the circumstances.

In his Motion to Reopen, dated February 4, 2011 counsel states that the applicant has established extreme hardship to her spouse as a result of her inadmissibility. The applicant submits additional

evidence of hardship with her motion, including: an updated affidavit from the applicant's spouse, a psychological evaluation for the applicant's spouse, other medical documentation concerning the applicant's spouse and daughter, reports from psychologists from the applicant's daughters' school, and information about country conditions in Ecuador.

The AAO finds that the current record includes documentation to overcome the deficiencies in the applicant's previous record of hardship. The current record establishes that the applicant's spouse is suffering extreme hardship as a result of the constant worry, anxiety, and depression being separated from his family is causing. The psychological evaluation submitted on motion, dated January 21, 2011, indicates that the applicant's spouse has been diagnosed with major depressive disorder, anxiety disorder, gastritis, and psychosocial stress as a result of his constant state of worry concerning the wellbeing of his daughters in Ecuador. The record further shows that the applicant's spouse's concerns for his daughters are warranted given that his one daughter suffers from epilepsy and both of his daughters are having problems at school because of their inability to fully adjust to Ecuador. Moreover, documentation previously submitted indicates that, in the last 4 years, the applicant's spouse has been having production problems at work and tension headaches as a result of his anxiety. Thus, the applicant has now established that he would suffer extreme hardship as a result of separation.

The applicant has also shown that he would suffer extreme hardship as a result of relocation. The record indicates that the applicant's spouse has been working at the same employer for 11 years, that relocating to Ecuador would mean he would have to leave this employer, and that he has not been able to find employment in Ecuador that would have him earning enough money to pay for his family's needs and his daughter's medical bills. The applicant also expresses concern over the quality of his daughter's medical care and the crime rate in Ecuador. The country conditions documentation states that crime is a severe problem in Ecuador because of the limited police and judicial resources; that medical care is adequate in major cities, but not to U.S. standards in smaller communities; and that the stability of the country was greatly called into question in 2010 when there was an assassination attempt on the country's President during a violent police protest. Finally, the record does not indicate that the anxiety and depression the applicant's spouse is exhibiting as a result of his daughters suffering hardship in Ecuador will be eliminated by his relocating to Ecuador. As the applicant's spouse states, his family's suffering will probably worsen as a result of his relocating to Ecuador because they will no longer have the financial support of his employment in the United States. In addition, not all of his daughters' problems in Ecuador are caused by being separated from their father. The issues surrounding medical care for epilepsy, adaptation to the new school environment, and crime will continue with or without the applicant's spouse and the applicant's spouse has established that his daughters' wellbeing has an effect on his emotional wellbeing. Therefore, taking all hardship factors in the aggregate, we now find that the applicant has shown that he will suffer extreme hardship as a result of relocation.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7

I&N Dec. 582 (BIA 1957). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s illegal entry into the United States, her unlawful presence in the United States, and her failure to comply with her voluntary departure and removal order.

The favorable factors in the present case are the extreme hardship to the applicant’s daughters and husband as a result of her inadmissibility; the applicant’s lack of a criminal record; and the applicant’s attributes as a loving wife and mother.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the motion will be granted and the applicant’s appeal will be sustained.

ORDER: The motion will be granted and the underlying application is approved.