

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



U.S. Citizenship  
and Immigration  
Services



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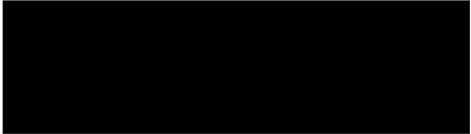
DATE: OCT 01 2012 OFFICE: MEXICO CITY, MEXICO



IN RE: Applicant: [Redacted]

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,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew  
Chief, Administrative Appeals Office

would impose an extreme hardship on his parents. In my opinion[,] this would be detrimental to his father[’s] medical care and well being [sic]” ██████████ Letter, dated August 18, 2010. Additionally, counsel submitted a letter from ██████████, Social Services Coordinator, stating that the applicant’s spouse’s father has been a client of the ██████████ Adult Day Care Program since October 13, 2008, and that the program provides services to individuals diagnosed with Alzheimer’s disease and/or memory disorders. Ms. ██████████ also states that the applicant’s spouse’s father requires assistance from his primary caregiver and family for daily life functions as well as the supervision of his medications and the management of his finances.

The AAO notes that in the applicant’s initial waiver application on appeal, the AAO determined that the applicant’s spouse would suffer extreme hardship upon separation from the applicant, in the aggregate, due to his depression as a result of separation from the applicant and his stepdaughters, the applicant’s adjustment to Venezuela, and the financial burden of supporting two households. The AAO also notes that the circumstances concerning the applicant’s spouse’s hardship upon separation have not changed since filing the waiver application currently on motion. The AAO thus concludes that were the applicant’s spouse to remain in the United States without the applicant due to her inadmissibility, the applicant’s spouse would suffer extreme hardship.

The AAO also notes that the additional evidence submitted on motion demonstrates that the applicant’s spouse would suffer extreme hardship if he were to relocate to Venezuela to be with the applicant. The applicant’s spouse serves an essential role in the daily care of his father, who suffers from a progressively, debilitating illness, and in the emotional and physical support of his mother, who serves as his father’s primary caregiver. Additionally, the record reflects that he has lived continuously in the United States for about 25 years, and maintains steady employment as an Assistant Manager of a grocery store. The AAO further notes that in its current travel advisory, the U.S. Department of State indicates that: violent crime is pervasive throughout Venezuela; the overwhelming majority of kidnappings and other major crimes are unreported to the police; well-armed criminal gangs operate widely and often set-up fake police checkpoints; and only a small percentage of crimes result in trials and convictions. See U.S. Department of State, *Travel Advisory – Venezuela*, dated March 5, 2012. In the aggregate, the AAO finds that the applicant’s spouse would suffer extreme hardship if he were to relocate to Venezuela because of his strong family, community, and social ties to the United States considered along with his length of residence and the normal hardships associated with relocation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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 stated 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 section 212(h)(1)(B) relief must bring forward to establish that he 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility, family and community ties, as well as the lack of a criminal conviction. The unfavorable factors include the applicant's removal order and her unlawful presence.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO 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, the previous AAO decision will be withdrawn, and the underlying application is approved.

As noted previously, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, and thereby, needs an approved Form I-212 to establish admissibility to the United States. When adjudicating the Form I-212, the District Director should consider that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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