

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: APR 05 2013

Office: PANAMA CITY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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 "Ron Rosenberg".

Ron Rosenberg
Acting 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 Ecuador 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated July 26, 2012.

On appeal, the applicant's attorney contends that the qualifying spouse is suffering extreme hardship due to her separation from the applicant and that she would also experience extreme hardship if she and their children relocated to Ecuador to be with him.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; relationship and identification documents for the applicant, qualifying spouse and their children; letters from the qualifying spouse, their daughters, family members, friends, and employers; medical documentation, including mental-health records and medical assessments regarding the qualifying spouse, their daughters, and the applicant's father-in-law; financial documentation; academic records of their daughters; articles regarding single parents and the effect of separation on children; an approved Petition for Alien Relative (Form I-130) and an Application for Immigrant Visa and Alien Registration (DS-230). The entire record was reviewed and considered in rendering 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.

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 wife 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 record indicates that the applicant entered the United States without inspection in January 2002 and remained until October 2011. The applicant accrued unlawful presence from January 2002 until he departed in October 2011. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. Therefore, as a result of the applicant’s unlawful presence, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) of the Act. Counsel does not dispute the applicant’s inadmissibility.

The applicant’s spouse asserts that she is suffering emotional and psychological hardships as a result of her separation from the applicant, and that she is also struggling as a single parent raising their two young children. The record contains letters from the qualifying spouse, family members, friends, as well as a psycho-emotional assessment of the qualifying spouse, letters from doctors and other medical records. The psycho-emotional assessment indicates that the qualifying spouse is suffering from “deteriorating depression associated with the prolonged absence” of the applicant and that his physical absence from her and their children has been “traumatic” due to her financial and emotional dependence on him. The applicant’s doctor also states in her letter that she diagnosed the qualifying spouse with severe depression immediately and commenced treatment, which includes medication and therapy. The record also reflects that their children are experiencing serious emotional issues as a result of the absence of the applicant, resulting in therapy and medication for one of their daughters, which in turn makes it more difficult for the qualifying spouse to raise their children by herself. Their friends and family confirm that the qualifying spouse relies on the applicant for emotional and financial support and that she is experiencing difficulties without him. The qualifying spouse also asserts that her depression and deteriorating mental health has negatively affected her employment and ability to perform at work. The record contains a letter from her

employer expressing concern about the qualifying spouse's changed emotional and professional demeanor, attributing it to the applicant's immigration situation, and confirming the same. The record suggests that she is at risk of losing her employment due to her emotional instability.

Moreover, the record reflects, through medical records and letters, that the qualifying spouse's father suffered a ruptured cerebral artery aneurysm rendering him disabled, and that the applicant assisted him financially, took him to doctor's appointments, and picked up his medications when he lived in the United States. The qualifying spouse indicates that her father misses the applicant and this appears to be putting additional stress on her. As such, the emotional, psychological and family issues that the qualifying spouse is experiencing due to her separation from the applicant, considered in their cumulative effect, constitute hardship beyond the common results of removal.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Ecuador. The qualifying spouse is a U.S. citizen and has lived in the United States for ten years. Her U.S. citizen children and legal permanent resident parents also live in the United States. Other than the applicant, she has no close family ties to Ecuador. The qualifying spouse's family, friends and other community members also describe her very close relationships with her family and friends in the United States. Furthermore, the record reflects that the applicant is not employed in Ecuador and that the qualifying spouse has worked for the same company in the United States for over seven years. The qualifying spouse states that she would lose her employment, where she has been promoted to a management position, if she relocated to Ecuador. She also states that she would lose their home. The record contains proof of her long-term employment and of her home ownership. The qualifying spouse also raises her concerns regarding her safety and the country conditions in Ecuador. As such, the record reflects that the cumulative effect of the hardships to the qualifying spouse, in light of her family ties to the United States, loss of long-term employment, financial responsibilities in the United States, country conditions in Ecuador and the qualifying spouse's length of time in the United States, rises to the level of extreme.

Considered in the aggregate, the applicant has established that his spouse 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-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 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-Morales*, 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 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.* at 301.

The favorable factors in this matter are the applicant's U.S. citizen spouse and children; the extreme hardships the applicant's spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; his lack of a criminal record; and his good character, according to letters of support from family and friends. The unfavorable factors in this matter are the applicant's entry without inspection and his 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.