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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 05 2013 Office: PANAMA CITY FIL

IN RE: Applicant:

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:

SELF-REPRESENTED

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,

for

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 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 again seeking admission within ten years of his last departure from the United States. The applicant entered the United States without inspection in December 2000, remaining until departing in August 2009. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

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 May 10, 2012.

On appeal the applicant asserts the denial ignored the evidence related to extreme hardship and the decision was unfair. With the appeal the applicant submits a brief; an affidavit from the applicant's spouse; copies of previously-submitted letters regarding the health of applicant's spouse and son; medical documentation for the applicant; financial documentation; a statement from the spouse's mother; a letter from a storage facility manager that the spouse removed items; a letter from an apartment complex confirming the spouse's residency dates; and letters of support from family.

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 spouse 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (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 applicant asserts that his spouse and son have visited him in Colombia, but each time became physically ill. He further asserts that Colombia has bad public health conditions, public education, and economy. He contends his spouse has chronic health problems from an injured back and pain and digestion disorders that are aggravated by stress and anxiety related to the separation from the applicant. The applicant further states that the applicant's son is sick, taking medication to control a medical condition and prevent anal bleeding, and his spouse does not have money to meet her basic needs and has become sick and depressed with her medical condition aggravated by forced separation from the applicant. He states his spouse and son were diagnosed with clinical depression and that instability is impacting the child's academic and social affective progress and there are indications he might be developing learning disabilities.

In her declaration the applicant's spouse state that the applicant has always been by her to help. She states that her son takes medication to prevent blood in his stool and that the medication cannot be found in Colombia. She states that she has visited Colombia four times and her son became ill. The spouse also states that she has terminated her apartment lease and moved in with her family and as she was unable to afford storage sold personal items. The applicant's spouse states she wants her son to have a safe environment and good education and that her father had left the family when she was three years old and does not want her son to also grow up without a father.

In a December 2010 letter a pediatrician states that the applicant's son experiences ongoing intestinal and respiratory symptoms. In a January 2011 letter the spouse's doctor states that she is beginning to suffer emotionally and physically while apparently developing stress-related stomach problems for which she takes medication. The letter notes that the applicant's spouse has been to emergency rooms more than once with atypical chest pain associated with anxiety. The spouse's primary care physician diagnosed her with moderate anxiety, insomnia, and gastro esophageal reflux disease with most complaints moderately controlled with nerve medications. A letter from a physical therapist indicates that the spouse was seen in August 2010 for lower back pain.

Having reviewed the preceding evidence, the AAO finds the applicant has established that his spouse is experiencing extreme hardship due to separation from the applicant. In reaching this conclusion the AAO notes the spouse's medical and emotional condition and her financial status. The record shows that the applicant's spouse and son experience medical problems and have been diagnosed with depression, and that family instability affects the son, adding to the spouse's emotional hardship. Without the applicant's financial contributions his spouse has been forced to give up her apartment, sell personal items, and move in with family. Considered in the aggregate, the AAO finds that the circumstances rise to the level of extreme hardship.

The AAO also finds that the applicant has established his qualifying relative spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. The record establishes that the applicant's child, a native and citizen of the United States, is integrated into the United States lifestyle and educational system, and suffering from health problems requiring regular medication possibly unavailable in Colombia. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds Matter of Kao and Lin to be persuasive in this case due to the similar fact pattern. To uproot the applicant's son would constitute extreme hardship to him, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were the son to remain in the United States the applicant's spouse would experience hardship due to long-term separation from her child. In addition, the record reflects that the applicant's U.S. citizen spouse was born and raised in the United States, having her immediately family her. Although the applicant's spouse translated documents from Spanish to English and has visited Colombia on several occasions, she would be relocating to a country where she has not lived and with which she is unfamiliar.

According to the U.S. Department of State, there are dangers to travel in Colombia. Although security has improved significantly, violence linked to narco-trafficking continues to affect some rural areas and parts of large cities while terrorist and criminal activities remain a threat throughout the country.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance 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 favorable factors in this matter are the extreme hardship to the applicant's U.S. citizen spouse and child, support letters from family members, the applicant's apparent lack of a criminal record, and the passage of more than ten years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry and subsequent unlawful presence while 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 his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained.