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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**

[Redacted]

DATE: DEC 31 2013 OFFICE: SEATTLE, WA

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 (the 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 27, 2013.

On appeal, counsel submits a brief in support, letters from counselors and physicians, medical records, articles on drug addiction and country conditions, real estate transaction records, and a statement from the spouse's mother. In the brief, counsel contests inadmissibility, asserting that the applicant did not depart the United States in February 2004. Counsel moreover contends the applicant's spouse would experience extreme hardship upon separation from the applicant and in the event of relocation to Ecuador.

The record includes, but is not limited to, the documents listed above, additional letters from the applicant and her spouse, statements from family and friends, letters from employers, articles on drug addiction and country conditions in Ecuador, documentation of birth, marriage, divorce, residence, and citizenship, other applications and petitions, and documentation of criminal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in

the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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 record reflects that the applicant was issued a B-1/B-2 visa on June 17, 1999, valid until June 16, 2004. The applicant's first I-94, Arrival Record, indicates she was admitted to the United States pursuant to that visa on August 11, 1999, with authorization to remain until February 10, 2000. The applicant admits she remained in the United States after that date. The Field Office Director found that because the applicant accrued unlawful presence from February 11, 2000 until February 2004, and departed the United States in February 2004, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant contends she never left the United States. The applicant states that her niece was participating in a college basketball tournament from February 19 to 20, 2004, and some members of her extended family, including her sister, decided to visit her and watch the niece play. The applicant also claims her sister wanted to visit the waterfalls in Canada during that time period, and consequently, on February 19, 2004 the applicant, her sister, and some children drove to the Canadian border checkpoint near Blaine, Washington. The applicant contends although the Canadian customs officer told her sister she was allowed to cross the border into Canada, the applicant was not allowed to do so. The applicant stated she was told to get out of the car and walk to an office. There, the applicant explained, she told a customs agent that, among other things, she was going to be in Blaine, Washington until Sunday. The applicant states that because her English was so poor, she thought she was indicating that she would be at the basketball tournament for 3 days. The applicant indicates the customs officer returned her passport with a new I-94 stamp, valid until February 22, 2004. She concludes that they then drove back to Blaine, and that she has not subsequently left the United States.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, although the applicant claims she never left the United States, and therefore never triggered inadmissibility under section

212(a)(9)(B)(i)(II) of the Act with a departure, the record, in particular, the new I-94 card, indicates otherwise.

The terms “admission” and “admitted” are defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *See section 101(a)(13) of the Act, 8 U.S.C. § 1101(a)(13)*. The applicant’s I-94 card indicates that the applicant procured admission to the United States at the border near Blaine, Washington on February 19, 2004 with permission to remain until February 22, 2004. While the applicant has presented a detailed affidavit related to the incident, she has provided no clear evidence which would explain why she would be given an admittance stamp if she had not departed the United States. In addition, the applicant indicated on her Form I-485, Application to Register Permanent Residence or Adjust Status that her last arrival into the United States occurred on February 19, 2004. *See I-485 Application*, signed November 6, 2010. This arrival date was also noted on the applicant’s Form I-130, Petition for Alien Relative. *See I-130 Petition*, signed November 6, 2010.

Given this documentation, the AAO finds the applicant has not established, by a preponderance of the evidence, that she did not depart the United States in February 2004. As such, the AAO finds the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act because the applicant accrued more than one year of unlawful presence and subsequently departed the United States. The applicant’s qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s spouse.

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 v. I.N.S.*, 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's spouse claims he will experience emotional and financial hardship without the applicant present. The spouse states he has a family history of abuse, and that his daughter was also abused by his ex-wife and her friends. The spouse indicates that he tried to stop his daughter's abuse, but when his efforts failed, he turned to methamphetamine ("meth") for comfort. The spouse asserts he became addicted to meth, eventually overcame his addiction, and moved from Idaho to Washington. The spouse contends the applicant has become his emotional support, and helps him with staying away from meth as well as with his stress and depression. Letters from his mental health counselor are submitted in support. Therein, the counselor indicates the spouse reported symptoms of depression and a significant history of methamphetamine addiction. The

counselor adds that the spouse stated his last relapse occurred seven years ago during a particularly depressive period. The counselor concludes that the spouse is currently at risk of severe depression and possible methamphetamine relapse based on the stress of the applicant's possible deportation. The spouse's physician indicates that the spouse was seen for chest pain due to stress, and that medical treatment for stress has been initiated. Copies of prescriptions for chest pain and depression are submitted on appeal, as are articles on drug addiction. The spouse moreover states that, although he has a good job with [REDACTED] since the applicant lost her work authorization and consequently her job they have been having financial difficulties. The spouse explains that their house is in the process of foreclosure, and they have had to move into an apartment with his family members, who have also been foreclosed upon. Foreclosure and short sale documents are submitted on appeal.

The applicant's spouse additionally contends he cannot relocate to Ecuador. He states that he has an extensive network of friends and family in the United States, and that he does not know anyone in Ecuador. The spouse claims that his daughter is a single mother, and he would not be able to support her if he relocated to Ecuador. He adds that relocation would entail separation from his grandson, who is one year old. The spouse adds that he does not speak Spanish, and that consequently assimilating to life in Ecuador would be difficult. Counsel contends the spouse would be unemployable in Ecuador, given his lack of relevant language skills, his education, and his job skills. Counsel also states that the poverty, poor medical facilities, and culture of drugs in Ecuador will be detrimental to the spouse's well-being. Articles on country conditions in Ecuador are present in the record.

The applicant has submitted evidence demonstrating that she provides emotional support for her spouse. Letters from family and friends as well as statements from the spouse's psychologist corroborate that the spouse has depressive symptoms and was addicted to methamphetamines, and that the applicant's presence and support helps him with these issues. The record also contains documentation from multiple sources indicating that the spouse has difficulties due to his family history, both with his parents and with his ex-spouse. Assertions that the applicant's spouse requires emotional support which is above and beyond the support normally required are substantiated by documentation of the spouse's negative family history, his past drug addiction, stress, as well as his depression.

The record does not contain complete evidence on the family's current income and expenses to ascertain the extent of their financial hardship. However, the applicant has submitted evidence showing that, after the applicant lost her employment authorization, their home was the subject of foreclosure proceedings, and that it was in the process of being sold as a short sale. This documentation supports assertions that the applicant's spouse, although he retains his employment, requires the applicant's income to meet some of the family's financial obligations.

The AAO therefore finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships

commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Ecuador without her spouse.

The applicant has also submitted sufficient documentation to demonstrate that her spouse would experience extreme hardship upon relocation to Ecuador. The record reflects that the spouse, who was born in the United States, has close family ties in this country, and has been employed by the same employer for over thirteen years. Documentation submitted indicates that, in contrast, the spouse does not have any ties in Ecuador, nor does he speak Spanish. The spouse's demonstrated lack of ties, language skills, or familiarity with Ecuador indicate that he will have difficulty adjusting to life in that country. Moreover, although assertions that the spouse will experience safety-related issues in Ecuador are not supported by a U.S. Department of State travel warning, the spouse has shown that relocation will entail relinquishing his relationships with medical care providers in the United States.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Ecuador.

Considered in the aggregate, the applicant has established that her 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 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.

The negative factors include the applicant's 2003 driving under the influence conviction, her unlawful presence and periods of unlawful status in the United States, as well as evidence indicating she was employed without authorization. The positive factors include the extreme hardship to the applicant's spouse and documentation of good moral character as stated in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.