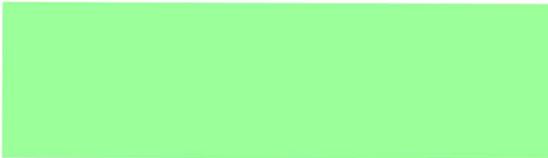


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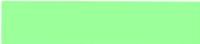


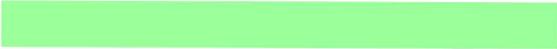
U.S. Citizenship  
and Immigration  
Services



Date: **FEB 19 2013**

Office: PANAMA CITY

FILE: 

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,

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 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. In addition, he was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), because he was ordered removed. The applicant is married to a U.S. 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 March 8, 2012.

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

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212)<sup>1</sup>; two Notices of Appeal or Motion (Forms I-290B); relationship and identification documents for the applicant and qualifying spouse; letters from the applicant, qualifying spouse, family members, friends, employers and their church; medical documentation regarding the applicant, qualifying spouse and her mother, including medical information about their health issues; financial documentation for the qualifying spouse, her mother, their business and the applicant; copies of the applicant's high-school diploma, professional certificates and licenses; country-conditions materials about Colombia; documentation regarding the cost of travel to Colombia; an approved Petition for Alien Relative (Form I-130); an Application for Asylum and Withholding of Removal (Form I-589) submitted by the applicant's mother on behalf of his family with supporting evidence; a denied Application to Register Permanent Residence or Adjust Status (Form I-485) 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-

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<sup>1</sup> The applicant also appealed the denial of his Form I-212 application. That appeal was decided in a separate decision.

....

(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 on September 15, 1999 as a non-immigrant visitor with permission to remain until February 15, 2000. The Form I-589 that the applicant’s mother submitted on behalf of herself, the applicant and their family was denied by an immigration judge on June 24, 2004. The immigration judge’s decision was affirmed by the Board of Immigration Appeals on July 28, 2005. The applicant accrued over one year of unlawful presence between July 28, 2005 and his departure on November 25, 2007. 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. The applicant has not disputed his inadmissibility.

The applicant’s spouse asserts that she is suffering emotional and psychological hardships as a result of her separation from the applicant. The record contains letters from the qualifying spouse, family members, and friends, as well as prescriptions for the qualifying spouse’s insomnia, depression and other psychological issues. Their friends and family confirm that the applicant’s spouse has been under constant stress, is struggling with depression and has isolated herself since her separation from

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the applicant. The qualifying spouse also has a family history of depression. The qualifying spouse expresses her desire to have a family and wants to raise their children having two parents. The record reflects that she was raised by her mother, who was a single parent, and she took on many parental responsibilities caring for her younger brothers during her own childhood. The qualifying spouse also indicates that she is financially struggling without the assistance of the applicant. Documentation in the record corroborates her claims of significant credit-card and student-loan debt and also shows that the applicant financially helped her family prior to his departure. Further, the record reflects that she supports the applicant in Colombia by paying for his housing and phone bills, and she has fallen behind on the rent payment. As such, the emotional, psychological, financial 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 Colombia. The qualifying spouse was born in the United States, has lived in the United States for her entire life and has no relatives in Colombia. Her mother, siblings, grandmother and uncle live in the United States. The letters from 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. The qualifying spouse also fears that she would be unable to travel to visit her family and friends in the United States if she relocated to Colombia because of the high cost of travel, as documented in the record. She also states that she does not speak Spanish well. Furthermore, the record reflects that the applicant is not employed in Colombia and that the qualifying spouse has been paying for his rent and cell phone bills. The record also reflects that the applicant's spouse started a tax business with her mother in 2007 and that she is primarily responsible for the business. Moreover, the business helps to financially support her mother and younger brothers. In addition, the applicant's spouse is responsible for caring for her mother, who has various serious medical issues as documented in the record. The qualifying spouse, in one of her letters, also raises her concerns regarding her safety and the country conditions in Colombia, including the insecurity and the availability of healthcare and employment. The record contains reports regarding Colombia that support her assertions. 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 and lack of ties to Colombia, country conditions in Colombia, financial considerations and family responsibilities in the United States, 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-Moralez*, 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-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 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 she 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 extreme hardships the applicant's U.S. citizen 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 accrual of unlawful presence in the United States and his removal order.

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.