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DATE: **FEB 27 2013**

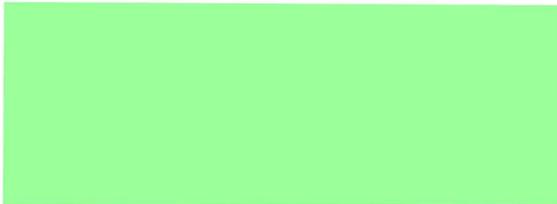
Office: PANAMA CITY

File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

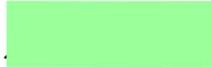
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office



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DISCUSSION: The Field Office Director, Panama City, Panama, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Venezuela 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. While contesting the unlawful presence finding, she is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her lawful permanent resident father.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, June 4, 2012.

On appeal, the counsel for the applicant submits a brief contending the field office director erred in finding the applicant to have been unlawfully present and in failing to find extreme hardship on humanitarian grounds, as well as supporting statements of the applicant and her father, an Infopass appointment notice and documents provided to counsel by USCIS at the applicant's appointment. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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....

The applicant was inspected and admitted to the United States on October 17, 2004 in K-2 status until January 5, 2005 and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on December 29, 2004. Her application for adjustment of status was denied on January 10, 2006, and she departed the country on January 25, 2008. Meanwhile, the applicant's

father adjusted his K-1 status to that of lawful permanent resident on March 15, 2006 after marrying his fiancée-petitioner on September 2, 2004. On October 21, 2008, he filed a Petition for Alien Relative (Form I-130) on the basis of which the applicant sought an immigrant visa. A Consular Officer found her inadmissible for having accrued unlawful U.S. presence from her 18th birthday on April 8, 2006 until she left the United States.

The record reflects that the applicant's Form I-485 was denied for abandonment due to nonappearance at her scheduled November 8, 2005 USCIS interview and also contains the applicant's claim that she never received notice of this appointment. Although it is well established that the applicant bears the burden of proving she is not inadmissible under the Act, *see* Section 291 of the Act, 8 U.S.C. § 1361, she offers no documentation supporting this claim.¹ Moreover, while counsel asserts that her period of unlawful presence would have been tolled by the pendency of the Form I-485, had it not been so denied, the tolling provision at section 212(a)(9)(B)(iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iv), does not apply. The tolling provision applies to requests for an extension of stay or change of nonimmigrant status, and the applicant has not filed an Application to Extend/Change Nonimmigrant Status (Form I-539).

The applicant began to accrue unlawful presence on April 8, 2006, her 18th birthday, as she had no pending Form I-485.² Although she claims she was unaware the application had been denied, the AAO notes that USCIS sent the interview notice and the denial decision to the address she provided on the Form I-485. This application was never reopened, and the applicant's departure in 2008 triggered the 10-year unlawful presence bar. She thus requires a waiver of that inadmissibility in order to receive an immigrant visa.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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-Morales*, 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

¹ The applicant speculates that either U.S. mail delivery failed or that her stepmother might have intercepted the mail and withheld it (due to allegedly deteriorating circumstances with her new spouse, the applicant's father and qualifying relative herein). No documentary evidence of either scenario is provided.

² The filing of Form I-485 would have prevented her from accruing unlawful presence. However, since she was under 18 when it was denied in January 2006, she did not begin to accrue unlawful presence immediately upon its denial, but rather when she turned 18 in April 2006.

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 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. INS.*, 138 F.3d 1292, 1293 (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.

Regarding hardship from separation, there is no documentary evidence that the applicant's father has incurred emotional hardship from his daughter's absence beyond the normal and typical impact of

separation from a loved one. Although the qualifying relative claims his daughter's inability to immigrate would cause him extreme hardship, there is nothing on record to substantiate the claim that her absence has caused or will cause him any specific physical or psychological harm. While the record reflects the qualifying relative and the applicant miss each other, there is no documentation showing that the applicant's absence has had such an impact on him as to cause extreme hardship. Likewise, there is no evidence supporting the applicant's assertions either that her father has serious medical issues or that her inability to immigrate will cause his health to worsen. Despite claiming that her inability to pursue higher education in the United States has caused her father sadness, the applicant has made no showing that she had begun post-secondary education before departing the United States or that the qualifying relative experienced more than the normal disappointment at seeing plans unfulfilled. Information that the applicant is currently attending university in Colombia belies the contention that she is suffering educational hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding the claim of financial hardship, the only documentation on record consists of the qualifying relative's 2007 W-2 Wage Statements showing gross income exceeding \$34,000 and a 2010 job letter stating that he earns \$21.00 per hour for the same company that has employed him since 2007. There is no indication of his expenses or assets, here or overseas, and no evidence of the applicant's assets, expenses, or income in Colombia. The claim that traveling overseas to visit his daughter has imposed or will impose an economic burden is unsubstantiated, as there is no evidence that the qualifying relative has visited the applicant since her departure or of the cost of such a visit. The record of the applicant's living situation reflects only that she currently resides with her mother in Colombia and attends university there.

Documentation in the record, when considered in its totality, does not show that the applicant's father is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relative will endure some hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

Regarding relocation, the evidence fails to establish that moving back to Colombia would impose extreme hardship on the qualifying relative. The record reflects that the applicant's father emigrated to the United States from his native Colombia in 2004 at nearly 50 years of age. The record contains no evidence of specific threats toward him or his daughter, and general safety concerns are not substantiated by official U.S. government reporting. The Department of State (DOS) advises U.S. citizens to exercise caution when traveling to Colombia, but notes that the threat of kidnapping has diminished significantly since 2000. *See Colombia—Travel Warning*, DOS, October 3, 2012.

The record reflects that the qualifying relative has lived here for eight and one-half years and is 58 years old. Although the applicant is born in Venezuela, she is a dual national of that country and Colombia currently living with her mother in the Colombian town where her parents were born. Other than employment, the qualifying relative demonstrates no ties to the United States. There is

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no evidence that he would have difficulty reintegrating to his native land. The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship by relocating abroad.

The documentation on record, when considered in its totality, reflects that the applicant has not established her father will suffer extreme hardship if she is unable to live in the United States as a permanent resident. The AAO recognizes that the applicant's father will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.