U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 2 7 2013 Office: PANAMA CITY FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality 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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his lawful permanent resident spouse and denied the application accordingly. *See Decision of Field Office Director*, dated April 5, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider the evidence of medical, emotional, and financial hardship the qualifying spouse has suffered in the applicant's absence and would continue to suffer if the waiver application were denied. *Counsel's Brief.*

The record includes, but is not limited to: statements from the qualifying spouse; a letter from the applicant's granddaughter; a letter from the qualifying spouse's pastor; and medical records. 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-
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> . . . .
>
> (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.
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> . . . .
>
> (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.

In the present case, the record reflects that the applicant was admitted to the United States on October 28, 2004 with authorization to remain in the country for six months. He remained in the United States until July 2007. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his last departure. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a lawful permanent resident. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the qualifying spouse. 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 U.S. 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. 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.

On appeal, the qualifying spouse states that she and the applicant have been married for 40 years and that she needs his support. She asserts that her health has deteriorated since his departure from the United States in 2007 and that she now requires regular treatment and medication for high cholesterol, high blood pressure, diabetes, and hearing loss. She states that she needs the applicant's assistance in carrying out her daily tasks. She also indicates that she has been depressed and has had to seek the treatment of a psychologist. She fears that her health will worsen if she remains in the United States without the applicant but that she would be unable to receive the necessary treatment and prescription medication in Guyana.

The qualifying spouse also states that her eldest son, her siblings, and her granddaughter are in the United States and that her only family members in Guyana are the applicant and her youngest son. She also explains that she is the primary caretaker for her 12 year-old U.S. citizen granddaughter, who requires regular medical care for sickle cell and renal illnesses. She states that the applicant has assisted her with caring for their granddaughter in the past. She worries

that no one will be available to care for her granddaughter if she relocates to Guyana. However, she does not want to force her granddaughter to move to Guyana, thereby separating her from her family, friends, school, doctors, and way of life in the United States. Finally, the qualifying spouse indicates that she relies heavily on the support of the other members of her church and does not believe that she would find the same spiritual support in Guyana.

The AAO finds that the qualifying spouse has suffered extreme hardship in the United States on separation from the applicant. The record indicates that the applicant and the qualifying spouse have been married for over 40 years and the qualifying spouse relies on the applicant for emotional and physical support and assistance. Medical records confirm that the qualifying spouse requires treatment for high blood pressure, high cholesterol, diabetes, and hearing loss. *See Letter from* dated April 8, 2011. A psychological assessment in the record also indicates that the qualifying spouse suffers from "extreme anxiety and clinical depression" caused in part by her separation from the applicant. *See Psychological Interview and Report,* . The qualifying spouse's mental health problems have negatively affected her physical health as well as her ability to care for her granddaughter. *Id.* The evaluation also notes that the possibility of continued separation from the applicant or relocation to Guyana makes "recovery from the clinical depression very difficult." *Id.*

The AAO also finds that the qualifying spouse would experience extreme hardship if she were to relocate to Guyana. The qualifying spouse has lived in the United States for over 12 years and has close family ties here. She also suffers from several serious health conditions for which she may not receive the proper care in Guyana.[1] Additionally, according to the psychological evaluation, her depression is likely to worsen if she is forced to relocate. *See Psychological Interview and Report.* Furthermore, the qualifying spouse is the primary caretaker for her young U.S. citizen granddaughter, who has been diagnosed with sickle cell thalassemia, as well as kidney and spleen illnesses. She has cared for and lived with her granddaughter since her granddaughter was a few months old and the two are very close. *See Letter from Niara Williams.* If the qualifying spouse were to relocate, she would be forced to leave her granddaughter or to separate her granddaughter from her family, medical care, and life in the United States. Finally, the qualifying spouse is an active member of her church and would lose the support of that community upon relocation. *See Letter from Bishop Eric D. Garnes, D.Min., MPS, Senior Pastor*, dated July 5, 2012. In the aggregate, these factors would create extreme hardship for the qualifying spouse if the waiver application were denied. The AAO therefore

[1] According to the U.S. Department of State:

> Medical care in Guyana does not meet U.S. standards. Care is available for minor medical conditions, although quality is very inconsistent. Emergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation. There are very few ambulances in Guyana. *U.S. Department of State, Bureau of Consular Affairs, Country Specific Information- Guyana,* July 27, 2012.

finds that the applicant has established extreme hardship to his lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

Matter of Mendez, 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 case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied, the applicant's other family ties in the United States, and the fact that he has assisted in the care of his U.S. citizen granddaughter. The unfavorable factor is the applicant's unlawful presence in the United States.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor. 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. The waiver application is approved.