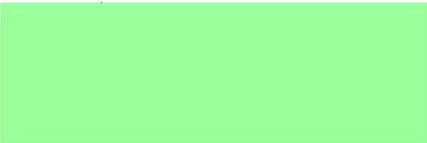


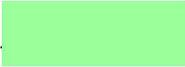


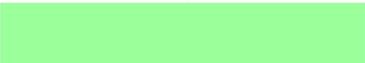
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DATE: **MAR 26 2013**

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:

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.

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 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 dismissed.

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 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.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated September 11, 2012.

On appeal, the applicant contends that her qualifying spouse suffers from serious illnesses for which he requires regular care and assistance. She states that if she were in the United States, she would cook healthy meals for her qualifying spouse and would make sure he took his medications on time, exercised, and attended doctor's appointments. The applicant also asserts that her qualifying spouse is experiencing financial hardship because he is supporting the applicant in Colombia. Finally, the applicant contends that her qualifying spouse would be unable to receive appropriate medical care if he were to relocate to Colombia.

The evidence includes, but is not limited to: a statement from the qualifying spouse; medical records; and money transfer receipts. 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.

.....

(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 testified before a consular officer that she entered the United States in 1999 as a B-2 visitor with authorization to remain until sometime in 2000. She remained in the United States until May 2008. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her last departure. She 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 U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. 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 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 applicant notes that the qualifying spouse suffers from high blood pressure, diabetes, and an abnormal thyroid. She states, “I believe it does not take a doctor [sic] to know that these are very serious illness[es] that require a lot of care like taking medication on time, exercising, keeping doctor’s appointments and a special diet.” The qualifying spouse asserts that she would assist her qualifying spouse with these matters if she were with him in the United States. She also states that according to her personal research, people with diabetes can suffer from mood swings. She fears that her qualifying spouse will become sad due to his separation from the applicant and that as a result he will “start being careless with his medications, doctor’s appointments, diet, etc.”

The applicant also states that her qualifying spouse is experiencing financial hardship because he is supporting himself in the United States while also sending money to her in Colombia. She has submitted copies of monthly money transfer receipts demonstrating that the qualifying spouse sends her approximately \$100.00 per month.

Finally, the applicant contends that although the qualifying spouse is originally from Colombia, relocation would still be difficult for him. She states that medical care in Colombia is inferior to that in the United States and that patients must provide their own medical supplies during hospital visits. She therefore feels that her qualifying spouse's health would deteriorate in Colombia and she believes that he should not be forced to "cho[o]se between love and his health."

The AAO finds that the applicant has failed to demonstrate that her qualifying spouse will suffer extreme hardship if he continues to be separated from the applicant. Although the record establishes that the qualifying spouse has been diagnosed with diabetes and hypertension and that his doctor recommended an "[a]bnormal thyroid function study," there is no evidence that his health conditions interfere with his ability to care for himself, carry out daily tasks, or live alone. The qualifying spouse does not make such a claim but instead states, "I am not a young man anymore, and of course I have [a] few ailments [such] as high blood pressure, etc. but I am still a strong man" Therefore, the evidence is insufficient to demonstrate that the qualifying spouse requires the daily assistance of the applicant in order to carry out basic tasks or manage his health.

Additionally, the evidence is insufficient to establish that the qualifying spouse is suffering financial hardship in the applicant's absence. While money transfer receipts in the record support the applicant's claim that the qualifying spouse sends funds to her in Colombia, there is no evidence that he cannot afford to do so. The applicant has not provided any information regarding the qualifying spouse's income, assets, or expenses which could support her claim that he has insufficient funds to support himself while assisting the applicant. 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)).

The AAO also finds that the applicant has failed to demonstrate that her qualifying spouse would suffer extreme hardship if he were to relocate to Colombia. According to the U.S. Department of State, medical care in Colombia is adequate in major cities. *See U.S. Department of State, Country Specific Information: Colombia*, dated January 31, 2012. The record reflects that the applicant currently resides in [REDACTED] Colombia, so it is reasonable to conclude that the qualifying spouse would join her there. [REDACTED] is located approximately 11 kilometers from the major city of [REDACTED] and there is no evidence that the qualifying spouse would be unable to receive regular medical treatment there. Furthermore, the qualifying spouse does not assert that he would be unable to live in Colombia or that he could not receive necessary medical care in that country. Instead, the qualifying spouse explains that he and the applicant "decided that it

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was better for us, due to my assets, as insurance, etc., that we will have a better quality of life residing in the States.” An inferior standard of living is insufficient to establish extreme hardship for purposes of a waiver. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999). Additionally, although the qualifying spouse has been a naturalized U.S. citizen since 2002, he is originally from Colombia and he states that he has no family or close friends in the United States. Even when considered in the aggregate, the difficulties the qualifying spouse may face in relocating to Colombia do not reach the level of extreme hardship. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.