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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 02 2013** Office: PANAMA CITY, PANAMA

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

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. section 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

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.

The applicant is a native and citizen of Colombia. She 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 and seeking admission within 10 years of her last departure. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 25, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision contained numerous factual errors and that the evidence submitted into the record establishes that the applicant's spouse would experience extreme hardship upon both relocation and separation. *Form I-290B*, received on October 24, 2012.

The record includes, but is not limited to, counsel's brief; statements from the applicant, the applicant's spouse, family members of the applicant and other witnesses; copies of gas, electric and other bills associated with the applicant's spouse's property holdings; copies of mortgage documentation and other records associated with the applicant's spouse's property holdings; tax records, business licenses and other documentation related to the applicant's spouse's personal business; country conditions materials on Colombia, including State Department Travel Warnings, background notes and materials on the social, political and economic conditions in Colombia, and newspaper articles reporting on crime in Perierra Colombia; medical records related to the applicant's spouse's mental health, including psychological examinations and medical visitation records; and other documents submitted in relation to proceedings before USCIS. The entire record was reviewed and all relevant evidence 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.

.....

The record indicates that the applicant entered the United States as a B-2 visitor for pleasure in March 2005 and remained beyond her authorized period of stay until she departed the United States on September 4, 2010. As such, the applicant was unlawfully present in the United States for over a year from approximately November 2005 until September 4, 2010, a period over one year, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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.

Counsel for the applicant asserts that the Field Office Director made numerous factual errors in rendering his decision, including the failure to discuss the full array of mental health impacts on the applicant's spouse, the economic conditions in Colombia, the applicant's spouse's financial and business ties to the United States and consideration of the totality of circumstances in determining extreme hardship to the applicant's qualifying relatives.

While many of counsel's assertions revolve around typographical errors, counsel is correct in asserting that the record contains substantial and probative evidence to support assertions of extreme hardship. Specifically, with regard to hardship upon relocation, counsel has asserted that the applicant's spouse would experience financial, emotional and economic hardship if he were to

relocate to Colombia. *Brief in Support of Appeal*, received October 24, 2012. Counsel explains that the applicant's spouse's son resides in the United States, that the applicant's spouse owns several properties and has managed his own lawn and yard company for 16 years. Counsel further explains that the applicant's spouse immigrated to this country by seeking asylum after suffering persecution in Peru, a country in close geographic proximity to Colombia. Counsel further asserts that the applicant's spouse would not be able to find commensurate employment in Colombia as a licensed arborist, and he would not be able to continue financially supporting his elderly mother in Peru.

The record contains sufficient documentation to establish that the applicant's spouse received asylum in the United States after suffering persecution at the hands of Shining Path in Peru. The AAO acknowledges that the country conditions materials submitted into the record corroborate the presence of social and political conflict in Colombia and that the applicant's spouse's experiences in Peru heighten his sensitivity to related risks. The AAO recognizes the impact of the emotional pain and fear of persecution cannot be understated, and finds this fact to be a seminal factor in the impacts on the applicant's spouse due to relocation. Although the applicant's spouse is not from Colombia, the close proximity of Peru, the existence of similar crime tactics in Colombia and the presence of narco-terrorism in both countries present a reasonable fear of relocating to Colombia.

The record contains evidence that the applicant's spouse has a son in the United States from whom he would have to separate in order to relocate. In addition, the AAO recognizes that the applicant's spouse has no significant family or community ties in Colombia.

The record contains substantial documentation pertaining to the applicant's spouse's residential property holdings and his personal lawn care business in the United States. An examination of this evidence indicates that the applicant's spouse does have substantial economic investments in the United States. As such, the AAO can determine that he would experience a significant financial impact upon relocation to Colombia.

The record contains evidence of other hardship impacts upon relocation that, when considered in aggregate, demonstrate that the applicant's spouse would experience hardship factors rising above the common impacts of relocation to the degree of extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts the applicant's spouse will experience physical and emotional hardship due to separation from the applicant. *Brief in Support of Appeal*, received October 24, 2012. Counsel explains that the applicant's spouse suffers from depression and anxiety and references several psychological examinations submitted into the record. In addition, counsel notes, the applicant's spouse immigrated to the United States and was afforded asylee status after having been persecuted by the Shining Path in Peru. The psychological impact on the applicant's spouse's mental health, asserts counsel, is compounded by the fact that he fears for the applicant's safety due his own traumatic history. An examination of the mental health reports in the record support this assertion.

Based on these observations, the AAO finds that the applicant's spouse is experiencing depression and anxiety related to separation from the applicant, and that the applicant's spouse's previous persecution in Peru heightens his emotional stress to a significant degree, resulting in a substantial emotional impact due to separation.

An examination of the record reveals the applicant's spouse has also been diagnosed with a hernia condition, and the medical analysis submitted recommends that he seek a surgical diagnostic. *Statement*, [REDACTED] MD, dated August 26, 2011. While the evidence is not fully probative of the physical impact this would have on the applicant's spouse's ability to function on a daily basis, it is sufficient as evidence of a significant medical condition.

When these and other common factors arising from separation are considered in the aggregate, the AAO finds that they rise above the common hardships to a degree of extreme hardship. As such, the AAO finds the record to establish that a qualifying relative will extreme hardship, both upon relocation and separation.

As the applicant has established extreme hardship to a qualifying relative, the AAO may now move to examine whether the applicant warrants a waiver as a matter of discretion.

In discretionary matters, the alien 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 section 212(h)(1)(B) 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).

See Matter of Mendez-Moralez, 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 AAO finds that the unfavorable factors in this case include the applicant’s unlawful presence. The favorable factors in this case include the presence of the applicant’s spouse, the length of time the applicant’s spouse has resided in the United States, the extreme hardship the applicant’s spouse would experience due to the applicant’s inadmissibility and the lack of any criminal record while residing in the United States. Although the applicant’s unlawful presence is a serious violation of immigration law, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office director’s decision will be withdrawn and the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.