

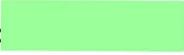


U.S. Citizenship  
and Immigration  
Services

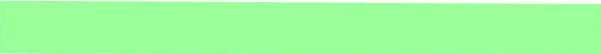
(b)(6)



Date: APR 25 2014

Office: SAN SALVADOR (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 (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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Panama City, Panama. On appeal, the Administrative Appeals Office (AAO) remanded the matter to the field office director for a determination on the applicant's inadmissibility under section 212(a)(6)(B) of the Act for failing to appear for a removal proceeding. After counsel filed a motion to reconsider, the AAO withdrew its previous decision and issued a Notice of Intent to Dismiss. The appeal will be sustained.

The record reflects that 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 Act for having been unlawfully present in the United States for more than one year and section 212(a)(9)(A)(ii) of the Act as an alien previously removed. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside with her husband and son in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. In a Notice of Intent to Dismiss, the AAO found that although the applicant established that her husband would suffer extreme hardship if he decided to remain in the United States, the applicant did not establish that her husband would suffer extreme hardship upon relocation to Colombia.

In response to the Notice of Intent to Dismiss, counsel contends, among other things, that relocation to Colombia is not an option for the applicant's husband, primarily because he owns a business and has his support system in the United States. In addition, counsel contends that with the high unemployment rate in Colombia and reports of age discrimination for people over thirty-five, relocating to Colombia is not feasible, particularly considering the cost of paying for the couple's son's medical needs.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on October 24, 2009; a letter from the applicant; statements from Mr. [REDACTED]; a copy of the birth certificate of the couple's U.S. citizen son; two psychological evaluations for Mr. [REDACTED]; copies of articles addressing safety, unemployment, and other country conditions in Colombia; copies of tax returns and other financial documents; documents related to Mr. [REDACTED] business; letters of support; letters from the couple's child's physician and counselor; copies of decisions from the Immigration Judge, Board of Immigration Appeals, and Ninth Circuit Court of Appeals; and an approved Petition for Alien Relative (Form I-130). 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.

....

(iii) Exceptions.

....

(II) Asylees. - No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(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.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

(i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] or at the end of proceedings under section [240 of the Act] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) *Other aliens.* Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien’s reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien’s reapplying for admission.

In this case, the record shows, and counsel does not contest, that in September 2003, the applicant attempted to enter the United States without inspection. The applicant was apprehended and expressed a fear of returning to Colombia. The applicant filed an asylum application, which was denied by the Immigration Judge on June 10, 2004, a decision upheld by the Board of Immigration Appeals. A petition for review was subsequently dismissed by the Ninth Circuit Court of Appeals on June 1, 2007. The applicant remained in the United States until her departure on August 4, 2010. The applicant accrued more than three years of unlawful presence. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure. Furthermore, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien who was ordered removed and departed the United States while a removal order was outstanding.

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.

In this case, the applicant’s husband, Mr. [REDACTED] states he has been living apart from his wife and their six-year old son. He claims that in the two years they have been separated, their son has had to undergo five surgeries and they had to move to another city for medical reasons. He contends their son is now in speech therapy and is receiving growth treatment. Mr. [REDACTED] asserts that he can hardly sleep, feels an emptiness in his chest every moment of every day, fears for their safety, and feels like he is on the verge of collapsing. He states he does not know how much more he can endure and has been seeing a psychologist to help him with his depression. According to Mr. [REDACTED] he must remain in the United States in order to financially support his family. He contends he works every day from 8:00 a.m. until 9:00 p.m. and that it would be impossible for him to pay all of his family’s expenses if he moved to Colombia, particularly considering the medicines and therapies his son requires. He states that he and his wife tried to start a business in Colombia, but that it did not succeed. He states that he is thirty-seven years old and the chances of him finding a job in Colombia are not good, despite laws that protect the right to work regardless of age.

After a careful review of the entire record, the AAO finds that the applicant has established extreme hardship to a qualifying relative. The AAO previously found that Mr. [REDACTED] would suffer extreme hardship if he remains in the United States without his wife. The AAO will not disturb that finding. The AAO also finds that if Mr. [REDACTED] relocates to Colombia to avoid the hardship of separation, he

would also suffer extreme hardship. In response to the Notice of Intent to Dismiss, the applicant has submitted additional documentation showing, among other things, that returning to Colombia, where he was born, would entail leaving his strong support network in the United States. The record contains numerous letters of support from individuals who have known Mr. [REDACTED] for years and who describe the difficulties he has experienced since his wife and son departed the United States. In addition, a letter from his church, where a certificate shows the couple's son was baptized in 2006, indicates that Mr. [REDACTED] is an active member of the church and volunteers as an usher every Sunday. Relocating to Colombia would entail leaving his church and his support system, as well as his business(es) in the United States. Furthermore, a psychological report in the record shows Mr. [REDACTED] has been diagnosed with Major Depressive Disorder, Severe and Recurrent with Psychotic Features and Generalized Anxiety Disorder. The record shows he has been prescribed anti-anxiety medication since 2011. The therapist concludes that "relocation to Colombia is out of the question" given his mental health is very fragile, he would be leaving behind his community and close relationships in the United States, and he would discontinue his monthly therapy sessions. Moreover, the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for Colombia based on terrorist and criminal activities, including violence linked to narcotics trafficking, throughout the country. *U.S. Department of State, Colombia Travel Warning*, dated April 14, 2014. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he returned to Colombia to be with his wife and child is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include: the applicant's unlawful entry and unlawful presence in the United States, and her failure to depart the United States as ordered by the Immigration Judge. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and son; the extreme hardship to the applicant's entire family if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.<sup>1</sup>

**ORDER:** The appeal is sustained.

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<sup>1</sup> The record reflects that the applicant's Form I-212, Application for Permission to Reapply for Admission to the United States After Removal (Form I-212), was denied on September 19, 2012. That decision was not appealed. Based on her removal order she remains inadmissible under section 212(a)(9)(A) and still requires an approved Form I-212.