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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: APR 04 2012 OFFICE: KENDALL, FLORIDA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, Florida 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated December 28, 2009.

On appeal counsel asserts that a waiver is not necessary because the applicant never committed fraud or willful misrepresentation of a material fact, or in the alternative, the applicant's spouse would suffer extreme hardship if the waiver is not granted. See *Form I-290,* Notice of Appeal or Motion, received January 26, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601 and denial letter; Colombia travel warning; Forms I-485, I-130; marriage and birth certificates; applicant's marriage-related affidavit and marriage license inquiry printouts; applicant's earlier Forms I-130, I-485, documents submitted in support of each, and related advance parole documents. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on November 3, 2000 the applicant's Forms I-130, Petition for Alien Relative and I-485, Application to Adjust Status were submitted, both asserting eligibility through an October 30, 2000 marriage to [redacted] purported to be a U.S. citizen. A State of Florida Certificate of Marriage was submitted in support and the applicant was granted advance parole based on his pending I-485 application. The record shows that on another Form I-485, filed June 14, 2009 based on his current marriage to [redacted] the applicant indicated that he had no prior marriages and had never previously applied for permanent resident status in the U.S. During a September 1, 2009 interview with USCIS the applicant testified and signed a sworn affidavit stating that he was never previously married and has never met nor been married to [redacted]

[redacted] Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

On appeal counsel asserts that the earlier Forms I-130 and I-485 were "filed by a notario in November 2000," and that "since no marriage existed, no fraud or willful misrepresentation existed." See Counsel's Brief, undated. Counsel asserts that the marriage was never recorded, "the petition" was abandoned prior to any immigration benefit being procured, and this "served as a timely retraction which purged any possible misrepresentation and should therefore remove it from any further consideration." *Id.* Counsel concludes that because "no fraud or willful misrepresentation occurred back in November 2000, there is no need for a waiver." *Id.* Counsel's assertions are unpersuasive. The fact that a falsely asserted marriage never existed does not cure the false assertion to USCIS that it did. Similarly, whether an immigration benefit is actually procured is irrelevant as § 212(a)(6)(C)(i) includes an applicant who seeks to procure or has sought to procure a benefit in addition to those who have successfully procured. Thus, the mere submission of Forms I-130 and I-485 demonstrates intent to procure an immigration benefit. Moreover, the applicant was in fact granted advance parole based on his pending I-485 application. The applicant has admitted that he signed the Form I-485 in which he indicates that he was married to [redacted] Counsel asserts that the applicant simply signed all the documents placed before him by the Notario without ever knowing their contents. The AAO notes that an applicant is rendered inadmissible under section 212(a)(6)(C)(i) of the Act, § 8 USC 1182(a)(6)(C)(i) for having intentionally submitted false documents, regardless of who prepared the documents or what his motivation was in submitting them. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (1975) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1961). The record supports the Field Office Director's finding of inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) 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 or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-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 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.

The record reflects that the applicant's spouse is a 39-year-old native of Peru and citizen of the United States. Counsel asserts that the applicant's spouse is a school teacher who "remains frightened and depressed" as she continues to face the prospects of separation from or relocation to be with the applicant. No supporting documentary evidence has been submitted and no other separation-related hardships have been asserted.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that the applicant's spouse is not Colombian and has no family ties in Colombia. Counsel asserts that the applicant's spouse would lose her annual salary of approximately $45,000, plus health insurance and tenure if she relocates to Colombia. While the AAO recognizes that the applicant's spouse would likely forfeit her U.S. employment and employment-related benefits should she relocate, the evidence does not establish significant economic hardship beyond that ordinarily associated with relocation related to a family member's inadmissibility.

Counsel asserts that country conditions in Colombia reflect an ongoing danger to citizens and visitors alike, and references a U.S. State Department human rights report and travel warning. The AAO has reviewed the State Department's current *Colombia Travel Warning*, dated February 21, 2012. While a risk of kidnapping and violence by terrorist and narco-terrorist groups remain a threat in the country, the report notes that security in Colombia has improved significantly in recent years and kidnapping has diminished significantly since its peak in 2000. The AAO recognizes that the applicant's spouse will experience some emotional hardship inherent in awareness of the risks described, and this factor has been considered in the aggregate in reaching a decision.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country neither her native nor current home; loss of U.S. employment, income, and employment-related benefits; ties to family, friends and community in the U.S.; and safety concerns in Colombia.

Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Colombia to be with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.