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

H5

[redacted]

Date: OCT 16 2012 Office: LOS ANGELES 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion to reopen will be granted and the waiver application will be approved.

The record establishes that the applicant is a native and citizen of Colombia who was found inadmissible to the United States pursuant to 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a wavier if inadmissibility pursuant section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). 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 Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated March 14, 2008.

On appeal, the AAO determined that the applicant had shown that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resided abroad due to his inadmissibility. However, the AAO concluded that as the applicant had not established that his spouse would experience extreme hardship should she relocate to Colombia to reside with the applicant due to his inadmissibility. The appeal was dismissed. *Decision of the AAO,* dated November 9, 2010.

On motion, counsel for the applicant submits a brief; a declaration from the applicant's U.S. citizen spouse; an WebMD internet printout about Cystic Fibrosis; a letter from the employer of the applicant's spouse; a letter from the mother of the applicant's spouse; a copy of the mother's permanent resident card; and a copy of a pay statement for the spouse's mother. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

> (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.

In its previous decision the AAO noted that the record indicates the applicant was convicted in 2004 of knowingly using and attempting to use a counterfeited, altered and falsely made United States visa under 18 U.S.C. Section 1546(a). The AAO thus determined the applicant was also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime of moral turpitude. The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) is found under section 212(h) of the Act and provides in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the applicant of subparagraph (A)(i)(I) ... of subsection (a)(2) ... if –
>
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien ...

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 its decision dated November 9, 2010, the AAO found that the applicant had established extreme hardship to his U.S. citizen spouse were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant as a result of his inadmissibility. Specifically, the AAO noted the assertions by the applicant's spouse that she would be unable to continue her education in Colombia, that she was born in the United States with no family in Colombia, and that she is emotionally close to her mother, who lives in the United States. The applicant's spouse also asserted that the applicant's family has left Colombia because of the war between the government and FARC and that she, too, fears for her life in Colombia. The AAO determined that as the applicant's spouse is an adult she does not have the same emotional or financial dependence upon a parent as a minor child and that, though Colombia has problems with terrorist groups and criminal organizations, conditions in Colombia had improved. The AAO concluded that with all the alleged hardship factors considered the applicant failed to establish his spouse would experience extreme hardship were she to join the applicant in Colombia.

In her statement the applicant's spouse writes that she is she is attending school to become a teacher and intends to have a family, both of which would be endangered if she were to relocate to Colombia. She also notes the medical possibility of having a child with cystic fibrosis and fears she may not be able to acquire needed medical in Colombia. She further notes that her mother lives with her and is largely dependent on her financially and because she suffers from migraine headaches which can cause her to become quite ill. The applicant's spouse further contends that the applicant had attempted to illegally enter the United States out of fear for his safety in Colombia

In a previous statement the applicant's spouse indicated that neither she nor the applicant has family in Colombia as she was born in the United States and the applicant's family has departed the country due to the war between the government and FARC. She adds that she fears for her safety as the applicant has been assaulted there.

In previous decisions involving the applicant the record established that he had been threatened and assaulted in Colombia and that much of his family has fled the country. The U.S. Department of State issued a February 21, 2012, travel warning to remind U.S. citizens of the dangers of travel to Colombia. It added that although security in Colombia has improved, violence by narco-terrorist groups continues to affect some rural areas and large cities.

A letter from the spouse's work supervisor complements her work abilities, but indicates a concern for her state of mind as she became preoccupied, not focused, and depressed since she learned of applicant's possible removal. In her statement the mother of the applicant's spouse describes her medical issues with headaches and the resulting physical and financial dependence on the applicant's spouse, her daughter.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States and the applicant's spouse to relocate to Colombia in order to reside with him. The applicant's spouse was born in the United States where she provides a home and care for her mother, while having no family in Colombia. The applicant's spouse has shown her fear of relocating to Colombia with the record establishing the the applicant has been threatened and assaulted there. Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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, "[B]alance 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 factor in this matter is the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were unable to reside in the United States, and the applicant lawful employment and payment of taxes. Other than his conviction for using an altered visa in an effort to enter the United States the applicant has no criminal record. The unfavorable factor in this matter is the applicant's attempted admission into the United States by fraud or willful misrepresentation.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that on motion, the applicant has established that the favorable factors in his application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the motion to reopen will be granted and the waiver application approved.

ORDER: The motion to reopen is granted. The waiver application is approved.