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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 18 2013 Office: OAKLAND PARK [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility, but alternatively seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his daughter.

The field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his U.S. citizen wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director,* December 5, 2012.

On appeal, filed in January 2013 but not received by the AAO until July 2013, counsel for the applicant contends that USCIS erred in finding the applicant inadmissible, as well as by concluding he had not shown his wife would suffer extreme hardship as a result of the applicant's inadmissibility if he is unable to remain in the United States. In support of the appeal, counsel submits a brief and documentation including: medical information, a letter from a counseling service, bills, and an updated hardship statement. The record contains previous immigration applications and supporting documentation; arrest and disposition records; the applicant's statements and supportive statements; copies of birth, marriage, and naturalization certificates; country condition information; financial evidence; and photographs. The entire record was reviewed and considered in rendering this decision.

The applicant admits presenting to U.S. immigration officials a Colombian passport containing a fraudulent I-551 lawful permanent resident stamp, but claims that this misrepresentation lacked willfulness, because the I-551 was obtained from a U.S. government official by mailing the passport from Colombia to the United States for the purpose of receiving a visa stamp with the help of someone contacted by his relatives here. The record also shows that, during processing of an asylum application in 2003, the applicant told the interviewing officer he had never applied for a visa in Colombia due to awareness of a two-year waiting period. The applicant has offered insufficient evidence to overturn the field office director's determination that he presented the fraudulent document with knowledge of its falsity.

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

> 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)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 [...].

The record shows that, on June 29, 2001, the applicant attempted to enter the United States using a passport with a fraudulent U.S. lawful permanent resident stamp. He was paroled into the country in order to appear in court regarding an outstanding arrest warrant from 1983, jailed for six months, and released. He demonstrated the arrest record had been expunged by judicial order dated July 16, 2002, and an Immigration Judge (IJ) subsequently terminated removal proceedings on October 28, 2004, as the applicant was the beneficiary of an immigrant petition filed in July 2004 (later approved on April 25, 2005). As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, he requires a waiver of inadmissibility.

A waiver of inadmissibility under section 212(i)(1) 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident wife 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant's wife and the applicant have been married since they were 19 and 20 years old, respectively. They arrived in the United States together in 2001 to join their four children, all of whom were already here. The record shows that their four children, six grandchildren, and three great-grandchildren live here. There is no indication what relatives she has in Colombia. Counsel for the applicant states that the applicant's wife has never worked outside the home, and a December 2012 letter from her mental health counselor indicates she is under treatment for panic disorder with agoraphobia. While documentation establishes that she is taking anti-anxiety medication and been referred to a program for panic disorder sufferers, there is no further detail about the nature of her condition and necessary treatment. The applicant's wife claims to have hypertension – there is evidence she is taking blood pressure medication -- and high cholesterol, for which no treatment evidence is provided. She also offers what appear to be printouts of blood test results to support her cholesterol claims and an "ECG" strip. These laboratory results are

unaccompanied by any plain language explanation from her doctor of the exact nature and severity of the claimed conditions. Without a doctor's assessment, the AAO is not in the position to reach conclusions concerning the severity of a medical condition claimed or the treatment needed. There is no indication that any of the qualifying relative's treatments are unavailable in her native Colombia, particularly in its capital, Bogota.

There is no clear statement on record how the applicant and his wife manage financially. The record reflects they are, respectively, 73- and 72-years-old, and that she does not work. There is no evidence that the applicant is currently earning income, has any accumulated assets, or how he and his wife are meeting their expenses of day-to-day living (including the costs of medical treatment discussed above). Without such evidence, we are unable to conclude that moving back to Colombia to remain with the applicant would impose different economic circumstances than those currently being experienced in the United States.

Based on the totality of the circumstances, the evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Colombia. While sensitive to the disruption caused by such a move, including the need to find new medical providers, the evidence fails to establish hardship that rises beyond mere inconvenience to the level of "extreme." Further, there is no indication the applicant's wife would be unable to visit her U.S.-based family members or that they would be unable to visit the applicant and his spouse in Colombia.

Regarding the claim of hardship due to separation from the applicant, the evidence shows that the qualifying relative's diagnosis, panic disorder with agoraphobia, warrants treatment with prescription medication and a referral to a wellness center for nonpharmaceutical therapy. The record also reflects that she has a prescription for blood pressure medication. In light of her age, medical conditions, and the length of her marriage to the applicant, the cumulative effect of the hardships the applicant's wife will experience due to separation from her husband of over 50 years rises to the level of extreme. The AAO concludes, based on the evidence that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship that is beyond those problems normally associated with family separation.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States.

The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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 not been met.

ORDER: The appeal is dismissed.