(b)(6)

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

[redacted]

Date: FEB 2 6 2013 Office: PANAMA CITY, PANAMA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 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 attempting to re-enter the United States using a back-dated entry stamp to hide his prior overstay.[1] The applicant is the beneficiary of an approved Petition of Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his U.S. citizen mother.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated November 10, 2011.

On appeal, the applicant's attorney asserts the applicant's U.S. citizen mother will suffer extreme financial, medical and emotional hardships, as well as hardship related to conditions in Colombia, should the waiver be denied.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs and letters from the applicant's attorney; letters and affidavits from the qualifying relative, her church, her friends, the applicant and his prior employer; relationship and identification documents for the qualifying relative, applicant and the applicant's children; U.S. naturalization certificates for the applicant's parents; educational and professional documentation regarding the applicant; medical documentation of his qualifying relative; a travel itinerary for the qualifying parent; proof of money sent to the applicant by the qualifying relative; photographs; an approved Form I-130; and an Application for Immigrant Visa and Alien Registration (DS-230). In addition, the record also contains Spanish-language documents that appear to relate to the qualifying relative's credit card debt. The requisite translations, however, were not provided. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, this evidence cannot be considered in analyzing this case. The rest of the record was reviewed and considered in rendering a decision on the appeal.

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[1] The applicant also was inadmissible 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 and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), for having been ordered removed. The applicant is no longer inadmissible under these grounds, however, because he has remained outside the United States for over ten years.

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

> (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, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security, "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.

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. The applicant's mother is the 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 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 AAO finds that the applicant has failed to establish that his qualifying parent will suffer extreme hardship as a consequence of her separation from him. The qualifying parent states that she is experiencing emotional hardship, because she is "being forced to live far away from [her] only son" and "feel[s] like [she] is missing valuable events in [her] grandchildren's lives." Letters from friends indicate that she is sad, depressed and lonely due to her separation from the applicant. However, the record lacks detail regarding the specific emotional and psychological hardships that the applicant's mother is experiencing, and the evidence provided fails to specifically address how her emotional and psychological hardships rise beyond the ordinary hardships associated with separation.

The applicant's mother also indicates that she is suffering from financial hardships due to her separation from the applicant. She states that she has "been forced to seek public assistance" to pay for her medical care and lives in someone else's home, where she rents a small room. She states that she can no longer afford a more comfortable space because the applicant is unable to help her, as he did when he lived in the United States. She explains that she supports herself by selling beauty products and cleaning houses when she is able to find work. The record also contains evidence that

between 2007 and 2011, she sent money, in amounts ranging from $81 to $1144, to the applicant in Colombia. However, the record does not contain documentation, such as tax returns or earnings statements, describing the qualifying parent's income or the applicant's income while he lived in the United States. As such, the record fails to demonstrate that the qualifying parent is suffering financially and that the applicant would be able to alleviate his qualifying parent's stated financial problems.

The qualifying parent also states that her health has "decayed drastically," and that she has been diagnosed with hyperlipidemia, high cholesterol and thyroid nodules, for which she takes three prescription medications. She asserts that she needs the applicant's presence, care and assistance, as well as financial support, to help her with her health condition. Medical documents verify the applicant's current health problems, including a thyroid nodule and hyperlipidemia, and also confirm that she has been prescribed medications. However, there is no explanation from a physician of the severity of her condition or whether she requires additional treatment. Further, as noted above, the applicant's mother indicates that she depends on public assistance "for all fees to keep [her] conditions under control," yet no documentation corroborates her claim and no documentation demonstrates that the applicant would be able to pay for her medical expenses. As such, the applicant has not provided sufficient documentation regarding his qualifying parent's emotional, financial, and medical hardships that she is experiencing as a result of her separation from the applicant.

The AAO also finds that the applicant has not met his burden of showing that his qualifying parent, a native of Colombia, would suffer extreme hardship if she relocated to Colombia to live with the applicant and her grandchildren. The record does not address the extent of the qualifying parent's family ties in either the United States or Colombia. The applicant's attorney asserts that the applicant's mother would face hardships due to the political, economic and safety conditions in Colombia and cites the 2010 U.S. State Department Human Rights Report on Colombia and a Board of Immigration Appeals case. However, the record does not describe how the applicant's mother specifically would be affected by conditions in Colombia. Further, the applicant has lived in Colombia for most of his life and he does not describe problems living there, aside from difficulties finding employment. Even were the AAO to take notice of general conditions in Colombia, the record lacks evidence demonstrating how the applicant's parent would be affected specifically by adverse conditions there. The current record does not establish that the qualifying parent would experience extreme hardship as a result of her relocation to Colombia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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