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: FEB 27 2013 Office: LAS VEGAS, NEVADA 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, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and is the father of three U.S. citizen stepchildren. He is the beneficiary of an approved Petition for 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 reside in the United States with his spouse and stepchildren.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 29, 2011.

On appeal, the applicant, through counsel, claims that the Field Office Director failed to fully evaluate the applicant's wife's medical hardship and the employment issues she would face in Colombia, among other hardship factors. *Form I-290B, Notice of Appeal or Motion,* filed September 26, 2011. Moreover, counsel claims that the Field Office Director erred in considering the level of fraud perpetrated by the applicant when applying the extreme hardship standard. *Id.*

The record includes, but is not limited to, counsel's appeal brief and brief in support of the Form I-601, statements from the applicant and his wife, letters of support, medical documents for the applicant's wife, employment documents for the applicant and his wife, financial documents in English and Spanish[1], school records for the applicant's stepson, and photographs. The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a 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.
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> ....
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> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

[1] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As some of the financial documents are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

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

> (1) 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 immigrant 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 first 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 stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 the present case, the record indicates that on October 31, 2003, the applicant entered the United States by presenting a Spanish passport that was obtained fraudulently. Based on the applicant's misrepresentation, the AAO finds that he is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not dispute this finding.

The record contains references to hardship the applicant's stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Describing her hardship should she join the applicant in Colombia, in an affidavit dated May 12, 2011, the applicant's wife states it would be "very difficult…emotionally and mentally to live in Colombia." She claims that her health, lack of employment opportunities, and family ties in the United States prevent her from moving to Colombia. In his affidavit dated May 12, 2011, the applicant states his wife's children and parents reside in the United States. The applicant's wife claims that she has full custody of her youngest son and his father will not allow him to move to Colombia; she cannot leave him in the United States. She states she suffers from seropositive rheumatoid arthritis and will be unable to afford routine medical care in Colombia. Medical documentation establishes that the applicant's wife suffers from seropositive rheumatoid arthritis. Counsel states that the applicant's wife employer provides her with health insurance, which covers

her medical expenses. In her appeal brief dated September 26, 2011, counsel states the applicant's wife's medical condition requires "constant monitoring and changes to her medication."

Additionally, the applicant's wife states that Colombia is not safe. The applicant claims that when he resided in Colombia, in two different incidents, he was robbed and assaulted by "guerrillas." The AAO notes that on October 3, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Colombia. The warning states that while "[s]ecurity in Colombia has improved significantly in recent years, ... violence linked to narco-trafficking continues to affect some rural areas and parts of large cities."

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, it has not been established that she cannot communicate in Spanish, that she would have difficulty adjusting to the culture, or that she would be unable to obtain employment in Colombia. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, although counsel describes certain hardship elements, without corroborating documentation, his unsupported assertions cannot be considered evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503,506 (BIA 1980). Moreover, though the applicant's wife's security concerns about Colombia are corroborated generally by a U.S. government report, without more her concerns do not support a finding of hardship, should she join the applicant in Colombia. Regarding the medical hardships to the applicant's wife, no documentary evidence was submitted establishing that she cannot receive medical treatment for her medical condition in Colombia or that she has to remain in the United States to receive treatment. Additionally, regarding the hardship that the applicant's stepson may experience, he is not a qualifying relative under the Act, and the applicant has not shown that hardship to his stepson would elevate his wife's challenges to an extreme level. The AAO notes that the applicant's wife indicates that she shares custody of her son with her former husband; however, the submitted marital settlement agreement does not show that her son would be unable to relocate with her. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Colombia.

Concerning the applicant's wife's hardship in the United States, she states she depends on the applicant financially, emotionally, and physically. She states the applicant earns $10 an hour and she earns $17.41 an hour, but her income alone is not sufficient to pay their bills. The applicant states he cannot support himself and his wife in Colombia. He states they have "several financial commitments" in the United States, and it would be difficult for his wife to pay their bills by herself. Counsel states the applicant's wife cannot work many hours because of her medical condition. As noted above, the applicant's wife suffers from seropositive rheumatoid arthritis. She claims that she feels sore every day, and it affects her "daily activities and work." She states when she is in pain, the applicant takes care of her, and it would be "very difficult" to live without him. Counsel also claims that the applicant's wife is suffering from stress because of the applicant's immigration situation.

The AAO acknowledges that the applicant's wife may suffer emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological

challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though the applicant's wife refers to financial difficulties, the record does not contain evidence corroborating claims that she would be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant would be unable to obtain employment in Colombia and, thereby, financially assist his wife from outside the United States. The record also establishes that the applicant's stepsons reside with them, and it has not been established that their two adult cannot financially assist their mother. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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. *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.