U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: OCT 2 3 2013 OFFICE: KENDALL, FLORIDA FILE:

IN RE: Applicant:

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:

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 waiver application was denied by the Field Office Director, Kendall, Florida, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the prior AAO decision will be affirmed. The waiver application will remain denied.

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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded 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 Field Office Director's Decision,* dated September 29, 2009.

The AAO dismissed a subsequent appeal, finding the applicant did not submit sufficient evidence to demonstrate that his spouse would experience extreme hardship given his inadmissibility. *See AAO Decision,* February 24, 2012.

On motion, filed on March 26, 2012 and received by the AAO on September 12, 2013, counsel submits a brief in support, medical records, federal income tax returns, letters from family and friends, financial records, photographs, and a 2010 U.S. State Department report on Colombia. In the brief, counsel contends the updated record, with evidence on the spouse's retinal detachment and the I-130 petition she filed on her daughter's behalf, are sufficient to demonstrate that the spouse cannot relocate to Colombia, nor can she be separated from the applicant without extreme hardship.

The record includes, but is not limited to: the documents listed above; letters of support; identity documents; a USCIS memorandum; psychological evaluation; financial and employment documents; country conditions information; police records; documentation on immigration proceedings; and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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

> (C) Misrepresentation.-
>
> > (i) In general.- 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.
> >
> > ...
> >
> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

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

> (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 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 reflects that the applicant presented himself as a Transit Without Visa (TWOV) passenger traveling from Cali, Colombia, to Madrid, Spain on March 4, 2001. However, upon transiting in the United States, the applicant requested asylum because he feared returning to Colombia. The applicant was placed in expedited removal proceedings under section 235(b)(1) of the Act and paroled into the United States, pending his expedited removal hearing. The immigration judge found that the removal charges, including the charge of inadmissibility under section 212(a)(6)(C)(i) of the Act, were proven by clear and convincing evidence. *See oral decision of immigration judge,* April 1, 2003. Inadmissibility is not contested on motion. The record therefore reflects that in presenting himself as a TWOV passenger when he intended to seek asylum in the United States, the applicant misrepresented a material fact. *See Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984). The AAO affirms that the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant was placed into removal proceedings under section 240 of the Act, 8 U.S.C. § 1250, initiated upon his arrival in the United States. He was then ordered removed by an immigration judge on January 23, 2003. The Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on December 20, 2004. The applicant has not departed the United States since his removal order. Therefore, the applicant is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i).

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 v. I.N.S.*, 138 F.3d 1292 (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.

Counsel contends the spouse suffers from new medical and family-related hardship. Counsel asserts that because of the spouse's financial situation, she is waiting to have surgery for her retinal detachment. Counsel moreover claims that, if left untreated, her condition could result in blindness. A March 20, 2012 report is submitted in support. Counsel also submits May 29, 2013 hospital

encounter notes indicating the applicant had surgery to treat her retinal detachment. Counsel additionally states that the applicant would lose his income and employment of several years if he relocated to Colombia. Copies of U.S. federal income tax returns are submitted in support.

Counsel claims that the applicant's spouse cannot relocate to Colombia because she has filed an I-130 petition on her unmarried daughter's behalf. A copy of the petition approval notice is submitted on motion. Counsel reiterates that the spouse has no residency status in Colombia, no ties in that country, and that she has never resided there. Counsel also states that the spouse has numerous family ties in the United States, and that she has resided in this country for over 24 years. Counsel adds that the country conditions in Colombia are very poor, and would cause the applicant's spouse hardship if she were to relocate. A 2012 U.S. State Department human rights report (2012 human rights report) on Colombia is submitted on motion.

The applicant has not supplemented the record with any new evidence on his spouse's emotional or psychological health, nor has counsel contested the AAO's previous finding with respect to the spouse's emotional difficulties upon separation. As such, the record reflects that the spouse was diagnosed with major depressive disorder in 2009.

Furthermore, the applicant has still failed to submit sufficient evidence discussed in the AAO's prior decision on financial hardship. The AAO noted on appeal that the record did not contain any evidence of the applicant's employment or economic opportunities in Colombia, or his inability to support his and the spouse's households in his absence. Although counsel submits a 2012 human rights report as well as copies of recent U.S. federal income tax returns, there is still no evidence to support a finding that the applicant would be unable to assist his spouse financially from Colombia. Furthermore, although the record reflects that the applicant is currently the sole wage-earner in the household, the spouse's Form G-325A reflects that the spouse held employment in the past. There is no explanation or evidence to show that the spouse cannot resume her former employment. As such, the record remains unclear on the degree of financial hardship the applicant's spouse will experience without the applicant present.

The record reflects that the applicant's spouse underwent surgery on May 29, 2013 related to her retinal detachment. The hospital encounter notes indicate that the spouse continues to experience retinal detachment. However, there is no documentation from the spouse's treating physician that, even after her surgery, she will continue to require treatment or family assistance for this condition. Without such an explanation in plain language from the treating physician, the AAO is not in a position to reach conclusions concerning the severity of a medical condition or any further treatment or family assistance needed.

The record contains evidence indicating that the applicant's spouse may experience some emotional and financial difficulties without the applicant present. However, as on appeal, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly

experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Colombia without his spouse.

The AAO noted on appeal that documentation on employment and the spouse's wellbeing in Colombia was lacking on appeal. Counsel's submission of a 2012 human rights report does not address these issues, as that report does not indicate that, given the limited evidence on the spouse's medical issues, her wellbeing would be directly impacted by relocating to Colombia. The report also does not demonstrate that the applicant and the spouse, given their employment history, would be unable to find adequate employment in that country. Additionally, it is unclear what hardship the spouse will experience due to the I-130 petition she filed on her daughter's behalf. Without such documentation, the AAO cannot determine the degree of financial, medical, or immigration-related hardship the spouse will experience in Colombia.

The AAO notes that the spouse will experience some hardship in Colombia. The AAO notes that relocation to Colombia would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Colombia.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 lawful permanent resident 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, although the motion is granted, the prior decision of the AAO is affirmed.

ORDER: The motion is granted, but the prior AAO decision is affirmed. The waiver application remains denied.