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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: BALTIMORE

Date: JAN 11 2010

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)

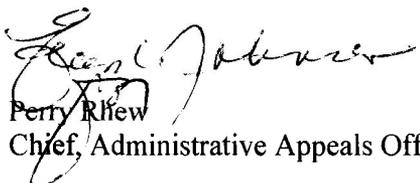
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia. The record indicates that the applicant presented a fraudulent passport to procure entry to the United States on October 18, 1996. The applicant was thus 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 having procured entry to the United States by fraud and/or willful misrepresentation.¹ 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 lawful permanent resident spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 26, 2007.

In support of the appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal, dated July 26, 2007 and referenced exhibits. In addition, supplemental documentation in support of the appeal was received by the AAO on September 26, 2007. 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 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 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....

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible...” and whether extreme hardship has been established is determined based on an examination of the facts of

¹ The applicant does not contest the district director’s finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse, a lawful permanent resident, is the only qualifying relative and hardship to the applicant, his in-laws and/or his sister-in-law cannot be considered, except as it may affect the applicant's spouse.

The applicant's lawful permanent resident spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that it is her dream to have a family and grow old with the applicant but the only thing standing in the way of having a child is the applicant's inadmissibility, as she feels it is important for a child to have a father. She further notes that she is currently employed, but without the applicant's income, she will suffer financial hardship, due to the mortgage, school tuition, bank loans, property taxes, utility bills, car payments and car insurance. Finally, the applicant's spouse notes that her parents and younger sibling, aged 7, have come to rely on the applicant for help and support. She notes that her parents are "dependent on [redacted] [the applicant]. Of my three sisters, one is in college, the other is in North Carolina and the youngest is only seven, so [redacted] and I are the ones that my parents call on for help. My father's medical condition doesn't allow him to do manual labor so he cannot help my mother out around the house.... My mother has a daycare in the basement and [redacted] helps her all the time because my father's back does not allow him to help take care of the children. My father has a hard time driving because of his back, and because mom is always at the daycare, [redacted] helps them with groceries and other tasks.... My husband is a huge parental part of my seven year old sister's life. Since my mother is constantly at the daycare and my father has limited mobility because of his back, [redacted] and I basically take care of her. We attend all the parent reunions at the school, drop her off and participate in all her extracurricular activities, and helps her with any difficult school work.. Without him [the applicant] they would not be able to survive because of my father's medical condition. It would probably worsen if he had to take on many of [redacted] [the

applicant's] roles. My youngest sister would be heartbroken, because he [the applicant] is such a big and emotional part of her life...." *Affidavit for* [REDACTED] *dated July 26, 2007.*

Letters have been provided from the applicant's spouse's parents, corroborating their dependence on the applicant and his spouse for their daily needs, and for the care of their seven year old child. In addition, financial documentation has been submitted, detailing the financial hardship the applicant's spouse would face were the applicant to relocate abroad, due to the loss of his income and the inability to meet their financial obligations.

Were the applicant unable to reside in the United States, the applicant's lawful permanent residence spouse would have to assume the role of caregiver to her parents and sibling, without the complete support of the applicant. She would also suffer financial hardship, due to the loss of her spouse's income and the inability to meet her financial obligations. The AAO thus concludes that the applicant's lawful permanent resident spouse would suffer extreme hardship were the applicant to reside abroad while he remains in the United States. The applicant's spouse needs her husband's support on a day to day basis.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. This criteria has not been addressed by the applicant, his spouse and/or his in-laws. The only reference to this criteria is made by counsel, who notes that the applicant's spouse has resided in the United States since 1993, when she was 12 years old, and relocation to Colombia would be a hardship as she would be required to adjust to a new culture and environment, she would have to seek employment and she would be separated from her parents and siblings. *Attachment to Form I-290B.* It has not been established that the concerns raised by counsel with respect to a relocation to Colombia would cause the applicant's spouse extreme hardship. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate aboard to reside with the applicant due to his inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his lawful permanent resident spouse will face extreme hardship were the applicant unable to reside in the United States, it has not been established that his lawful permanent resident spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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. The waiver application is denied.