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



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

H2

[Redacted]

FILE:

[Redacted]

Office: TAMPA Date:

JAN 29 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).

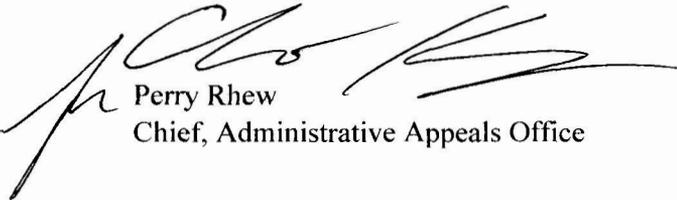
ON BEHALF OF APPLICANT:

[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 Interim District Director (“district director”), Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The district director concluded that 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. *Decision of the District Director*, dated August 29, 2007.

On appeal, counsel for the applicant contends that the applicant’s wife is suffering from depression, which constitutes a basis for finding that she will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated September 26, 2007.

The record contains, in relevant part, a brief and statements from counsel; a psychological evaluation for the applicant’s wife; statements from the applicant and his wife; medical documentation for the applicant’s wife; reports on conditions in Colombia; letters to the applicant from the Revolutionary Armed Forces of Colombia (FARC); documentation regarding a complaint the applicant filed with the Colombian government due to threats he received; documentation in connection with the applicant’s and his wife’s ownership of real property in the United States; a copy of the applicant’s birth certificate; tax records for the applicant and his wife; a copy of the applicant’s wife’s naturalization certificate; a copy of the applicant’s marriage certificate; documentation regarding the applicant’s wife’s employment; documentation of the applicant’s and his wife’s health insurance, car insurance, and bills; copies of banking records for the applicant and his wife, and; information regarding the applicant’s entry to the United States using a passport and B1/B2 visa that was issued to another individual. The entire record was reviewed and considered in rendering this decision.

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

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, 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 record reflects that on December 19, 2002 the applicant entered the United States at the Miami port of entry by presenting a passport and B1/B2 visa that were issued to another individual. Thus, the applicant entered the United States by fraud and misrepresenting a material fact (his true identity). Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Counsel notes that where an applicant arrives at a port of entry and immediately surrenders his fraudulent documentation and reports his true identity in the context of a request for asylum, he has not committed fraud or misrepresentation that serves as a basis for inadmissibility under section 212(a)(6)(C)(i) of the Act. *Brief from Counsel*, at 2, dated September 28, 2007 (citing *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991)). Counsel asserts that, although the applicant did not reveal his true identity upon entry, he later came forward voluntarily by affirmatively applying for asylum in the United States. Where an applicant immediately reveals the possession of fraudulent identity documentation upon first encountering a U.S. immigration officer, and seeks admission based on his true identity, he is not seeking to procure admission by fraud or willful misrepresentation. *Matter of Y-G-*, 20 I&N Dec. 794, 797-98 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. at 412-13. Specifically, at no point in such an encounter does an applicant attempt to mislead the officer using fraud or misrepresentation in order to procure admission to the United States. *Id.* However, in the present matter the applicant knowingly presented fraudulent documentation to a U.S. immigration officer to gain admission into the United States, while at all times maintaining that he was the individual identified in the documentation. Such actions render the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission by fraud or willful misrepresentation.

Counsel asserts that the applicant entered the United States using fraudulent documentation because he was fleeing harm in Colombia. However, the record shows that the applicant did not file a Form I-589 application for asylum in the United States until December 4, 2003, nearly a year after he arrived. It is noted that the application for asylum was not approved by an asylum officer due to a *finding that his testimony regarding his participation in political activities was not credible*, and on February 11, 2004 his application was referred to an Immigration Judge for further proceedings. An Immigration Judge terminated his proceedings on January 29, 2007 without reaching the merits of the applicant's claim of persecution so that the applicant could pursue his Form I-485 application to adjust his status to lawful permanent resident.

The AAO has no jurisdiction to review the asylum officer's finding that the applicant failed to show that he fled Colombia due to persecution on account of a protected ground. Thus, the applicant has not shown that he is a refugee, and the fact that he admitted in the course of his asylum proceedings that he entered using fraudulent documentation does not end his inadmissibility under section 212(a)(6)(C)(i) of the Act. The applicant has not established that he was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

On appeal, counsel contends that the applicant's wife is suffering from depression, which constitutes a basis for finding that she will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B* at 2. Counsel provides that the applicant's wife has been diagnosed with Adjustment Disorder with depression and anxiety for which she has been prescribed medication and she requires regular monitoring by health care professionals. *Brief from Counsel*, dated September 28, 2007.

Counsel states that the applicant fled Colombia to escape harm from FARC, and that the conditions that caused the applicant to flee still exist. *Id.* at 2. Counsel describes the events that occurred in Colombia that caused the applicant to depart, including threats to his life and personal safety from FARC. *Id.* Counsel contends that the applicant's family will experience extreme hardship if the applicant returns to Colombia. *Id.* at 3. Counsel asserts that the applicant's wife would suffer a decrease in physical and emotional safety, and that her depression may become so severe that she experiences complications. *Id.* Counsel states that family separation is itself a hardship to the applicant's family. *Id.*

Counsel states that the applicant and his wife have few relatives in Colombia, including the applicant's two aunts and uncle, and the applicant's wife's mother, brother, and grandmother. *Id.* Counsel indicates that the rest of the applicant's and the applicant's wife's family members reside in the United States. *Id.* Counsel indicates that the applicant has resided in the United States for over five years, and that the applicant's wife has resided in the United States for over ten years. *Id.* Counsel notes that the applicant and his wife are active with their church in Tampa, Florida. *Id.*

Counsel states that the applicant and his wife own two homes in the United States, including their residence and rental property. *Id.* Counsel provides that the applicant and his wife own two automobiles, they have steady jobs, and they pay taxes. *Id.*

The applicant describes the conditions under which he left Colombia, including the threats he received from FARC. *Statement from the Applicant*, dated September 26, 2007. The applicant indicates that his wife has always suffered depression, and that she has a history of treatment when she was a child in New Jersey and in Colombia in 2003. *Id.* at 2. He explains that his wife has been seen by several medical professionals, and that he has been asked to participate in treatment sessions. *Id.* He asserts that he needs to stay in the United States to help his wife and care for her. *Id.* He provides that residing in Colombia would be detrimental for his wife, as she was raised in the United States and she would have difficulty adapting. *Id.* He notes that health care services in Colombia are not sufficient to address his wife's mental health needs. *Id.* He explains that he has no other immediate family members in the United States who can assist his wife. *Id.*

The applicant's wife describes her history of treatment for mental health issues. *Statement from the Applicant's Wife*, at 2, dated September 26, 2007. She expresses fear that the applicant will suffer harm or death by FARC should he return to Colombia. *Id.* She indicates that she would have difficulty in Colombia should she attempt to return with the applicant, as she was raised in the United States, and she has medical needs that would not be met there. *Id.* She states that she does not have other relatives in the United States who could take the applicant's place in assisting and supporting her. *Id.*

The applicant's wife previously stated that her mother resides in Colombia, but that she has an approved Form I-130 relative petition on her behalf and she is in the process of immigrating to the United States. *Prior Statement from the Applicant's Wife*, dated June 27, 2007. She expressed that she is close with the applicant and that she will endure emotional hardship if they are separated. *Id.* at 1. She stated that Colombia is a very unstable and dangerous country, particularly if one is targeted by FARC or the National Liberation Army. *Id.* at 2. She expressed fear that her life would be in danger due to being married to the applicant who has been threatened by FARC, and that she could be targeted for kidnapping due to being a U.S. citizen. *Id.* She indicated that she would experience economic hardship in Colombia, as living expenses are high, she would have difficulty finding employment, and they would have to move often to avoid harm. *Id.* at 3. She explained that the applicant provides over 70 percent of their household income in the United States, thus she would endure financial hardship should he depart. *Id.*

The applicant submits a psychosocial evaluation of his wife performed by [REDACTED] [REDACTED] summarizes the applicant's wife's history, including the facts that she relocated to the United States to join her father and his new family at the age of 13, and that her mother and brother continue to reside in Colombia. *Psychosocial Evaluation from [REDACTED]*, dated September 26, 2007. [REDACTED] reports that the applicant's wife is suffering from anxiety and depression due to the possibility of the applicant's departure, and that her primary care physician prescribed Zoloft. *Id.* at 1. [REDACTED] indicates that the applicant's wife does not wish to leave the United States, thus she is conflicted. *Id.* [REDACTED] provides that the applicant's wife fears that the applicant's life may be threatened should he return to Colombia. *Id.* at 2.

The applicant provides a letter from [REDACTED] who indicates that he placed the applicant's wife on prescription medication for depression and anxiety, and he advised her to consult with a psychiatrist. *Letter from [REDACTED]* dated September 21, 2007. He states that the applicant's wife's past medical history includes "a history of decreased mood [and she was seen and] treated as a teenager by a psychologist in New Jersey." *Id.* at 1. He explains that her current symptoms include decreased mood, anxiety, headaches, insomnia, nightmares, decreased concentration, anhedonia, decreased energy level, decreased productivity, and mood irritability. *Id.*

The applicant submits evidence that his wife was seen in August 2003 by a medical professional in Colombia, and she presented symptoms of anxiety and depression for which she was prescribed medications. *Colombian Medical Documentation for Applicant's Wife*, dated August 29, and September 24, 2003.

Upon review, the applicant has shown that his wife will experience extreme hardship if the present waiver application is denied. The applicant has shown that his wife will suffer extreme hardship should she relocate to Colombia. The record supports that the applicant's wife faces possible threats to her personal safety in Colombia due to association with and marriage to the applicant.

As noted above, the applicant has received written threats in Colombia from FARC, and he reported that he received no meaningful assistance when he filed a complaint with the government of Colombia. While a U.S. asylum officer determined that the applicant was not credible when he described his political activities in Colombia, the asylum officer found that the FARC threats against the applicant were credible. *Asylum Officer Assessment*, dated February 2, 2004. The United States Department of State has reported that human rights abuses by FARC continue, including "political killings; killings of off-duty members of the public security forces and local officials; kidnappings and forced disappearances; massive forced displacements; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment of child soldiers; attacks against human rights activists; and harassment, intimidation, and killings of teachers and trade unionists." *U.S. Department of State 2008 Human Rights Reports: Colombia*, dated February 25, 2009. Thus, the fact that the applicant received direct, written threats from FARC constitutes a serious threat to his freedom and personal safety in Colombia. The applicant's wife faces risk of harm due to her relationship to the applicant.

It is noted that the applicant's wife would face significant emotional hardship residing in Colombia due to the applicant's prior difficulties with FARC. The record supports that her fear would be exacerbated by her history of anxiety and depression. The threat of harm combined with prior mental health problems constitutes unusual circumstances that go beyond the hardships ordinarily faced when a family member relocates abroad due to the inadmissibility of a spouse.

The applicant's wife would face other hardships should she relocate to Colombia, including financial consequences due to the loss of her employment, separation from her present medical care providers, separation from her community, and complications in managing or disposing of the real property she and the applicant own.

Considering all elements of hardship in aggregate, should the applicant's wife relocate to Colombia, she will endure extreme hardship.

The applicant has shown that his wife will encounter extreme hardship should he depart the United States and she remain. The applicant's wife expressed that she is close with the applicant and she does not wish to be separated from him. As discussed above, the applicant previously received threats from FARC in Colombia. Thus, the applicant's wife would face substantial apprehension regarding the applicant's presence in Colombia due to the possibility that he may be harmed there. The applicant's wife's history of depression and anxiety would impact her ability to cope with family separation and serious risks to the applicant's safety. The applicant's wife's prior mental health challenges and the credible threat of harm to her husband by a large organization known to use violence constitute unusual circumstances not ordinarily faced when an individual's spouse relocates abroad due to inadmissibility.

Should the applicant depart the United States and his wife remain, his wife faces the loss of the applicant's contribution to their household expenses. The AAO acknowledges that removing a working adult from a household commonly creates economic challenges.

Based on the foregoing, the applicant has shown that his wife will endure extreme hardship should he depart the United States and she remain.

All elements of hardship to the applicant's wife have been considered in aggregate. Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will experience extreme hardship should he be compelled to depart the United States, whether she remains without him or relocates abroad. Accordingly, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(i)(1) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States by fraud and misrepresenting his true identity.

The positive factors in this case include:

The applicant's wife would experience extreme hardship should the applicant depart the United States; the applicant has shown a propensity to work and pay taxes in the United States; the applicant is engaged with his local community through religious activities and volunteer services, and; the applicant owns property in the United States.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.