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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]

Office: NEWARK, NEW JERSEY

Date: **MAR 29 2010**

IN RE: [REDACTED]

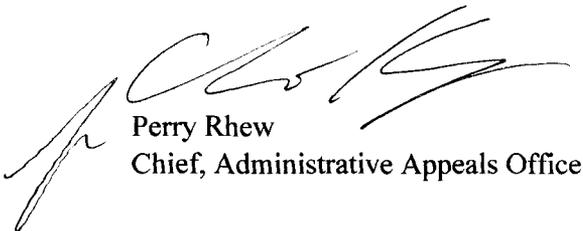
APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 27-year-old 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 (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured admission into the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved relative visa petition based on his marriage to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the Director*, dated Aug. 31, 2007. On appeal, the applicant contends through counsel that the director erred in denying the application. *See Form I-290B, Notice of Appeal*, dated Sep. 27, 2007; *Brief on Appeal*. Specifically, the applicant contends that he is not inadmissible because he retracted his misrepresentation. *Id.* In the alternative, the applicant contends that the evidence establishes that the denial of the waiver imposes extreme hardship on his U.S. citizen wife.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they married in New Jersey on April 26, 2006; a psychological report on the applicant's wife by [REDACTED]; a letter from [REDACTED] regarding the applicant's wife's 2007 pregnancy; declarations by the applicant and his wife; Colombian country conditions information; tax records and financial documents; family photographs; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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:

Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact

(1) The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) of this section 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

The record indicates that the applicant entered the United States on November 26, 2004, by presenting a visa indicating that he was a Colombian military official attending a training course in Miami, Florida. *See Form I-94, Arrival – Departure Record* (indicating admission under the A2 classification). The applicant was not employed by the Colombian military, *see Declaration of [REDACTED]*, dated Jan. 17, 2007, and he did not attend the training course in Florida, *see Form I-601, Application for Waiver of Grounds of Inadmissibility*. The applicant's misrepresentations regarding his employer and his purpose for visiting the United States render him inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

Counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he retracted his misrepresentations by filing a waiver under section 212(i) of the Act. *See Notice of Appeal; Brief in Support of Appeal*. This contention lacks merit. A timely retraction of a misrepresentation may serve as a defense to inadmissibility under section 212(a)(6)(C)(i) of the Act. *See Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). For the retraction to be effective, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; *see also Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely). Here, the applicant's filing of a waiver application after exposure of the misrepresentations during his adjustment interview, and over two years after procuring admission into the United States, does not constitute a voluntary or timely retraction. *See Matter of Namio*, 14 I&N Dec. 414.

To the extent that the applicant claims that his misrepresentations were not willful, *see Declaration of [REDACTED]*, this contention also lacks merit. In order to find a misrepresentation "willful," it must be determined that the applicant deliberately and voluntarily misrepresented material facts, and that he or she was aware of the falsity of the representation. *See Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997) ("The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary."). "Proof of an intent to deceive is not required; rather, knowledge of the falsity of the representation is sufficient." *Id.* Here, there is no evidence in the record to support a finding that the applicant accidentally claimed that he was a Colombian military official or that he intended to attend a training course in Florida, or that he believed these statements to be true. *See Witter*, 113 F.3d at 554. Accordingly, the applicant has not met his burden of establishing that his misrepresentations were not willful.

In order to obtain a section 212(i) hardship waiver, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose

hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450

U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant's spouse is a 37-year-old native and citizen of the United States. The applicant and her husband met in 2005, and have been married for almost four years. The couple has a three-year-old U.S. citizen daughter, and the applicant's wife has a 14-year-old U.S. citizen son from a previous marriage. The applicant's spouse asserts that she is suffering extreme hardship as a result of the denial of the waiver.

Regarding the emotional hardship of separation, the applicant's spouse states that the applicant is her soul mate, and that they have a very strong relationship. *Affidavit of* [REDACTED] dated Jan. 17, 2007. She had two previous unsuccessful marriages, and her second husband abandoned her. *Id.* The applicant's spouse states that the applicant has "taught [her] a whole new way of life and commitment." *Id.* The applicant's wife claims that the applicant has developed a close relationship with her son, and she fears that she would not be able to raise her children without the applicant's emotional and financial support. *Id.* In 2007, the applicant's wife had a high-risk pregnancy, which she attributes to her fear of her husband's removal from the United States. *Id.*; see also *Letter from* [REDACTED] (confirming her pregnancy and chronic hypertension). Additionally, the applicant's wife asserts that she has no other immediate family members in New Jersey because her parents plan to move overseas. *Id.*

A psychologist has diagnosed the applicant's wife with Major Depressive Disorder as a result of her fear that her husband will be forced to leave the United States. See *Psychological Report, supra*. The applicant reported symptoms of, among other things, sleep disturbance, overeating, persistent sadness, and suicidal ideation. *Id.* The psychologist also opined that the applicant's daughter would suffer from separation anxiety and depressive symptomatology if she becomes separated from her father. *Id.*

Although the record indicates that separation from the applicant could cause extreme psychological hardship to the applicant's wife, the evidence of record does not support a finding that relocation to Colombia would cause extreme hardship. First, the evidence does not indicate that the applicant's wife has close family ties in the United States that would be impacted by relocation. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of the presence of family ties to U.S. citizens or lawful permanent residents in the United States). Rather, the applicant's wife notes her parents' planned relocation outside of the United States. See *Affidavit of* [REDACTED] *supra*.

Second, the record does not indicate that relocation would cause extreme financial hardship. The applicant's wife reported an annual salary of \$60,500 in 2005. See *Form I-864, Affidavit of Support*. Although the applicant's wife has a history of steady and gainful employment in the United States, the applicant did not present any evidence showing that she lacks the resources or ability to obtain employment and to support the family in Colombia. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (recognizing importance of the financial impact of departure). Although employment

discrimination against women remains a problem in Colombia, *see Country Conditions Information*, the applicant's wife did not claim that relocation would cause financial distress.

Third, the record indicates that the applicant's wife's hypertension has been controlled with medication, *see Letter from [REDACTED] supra*, and the applicant did not present any evidence that his wife suffers from any additional health conditions that would cause extreme medical hardship in Colombia. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (recognizing importance of significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate). Regarding the applicant's wife's mental health, [REDACTED] indicates that the applicant's wife's depression would be ameliorated should she not be separated from the applicant. *See Psychological Report*.

Fourth, the applicant's wife's claims that her son would suffer extreme hardships as a result of relocation because he participates in remedial educational programs in the United States, and because he maintains a close relationship with his biological father. *See Psychological Report*. However, hardship to the applicant's stepson is not calculated in the extreme hardship analysis, except to the extent that his hardship impacts the applicant's wife. *See Section 212(i) of the Act*. Although the applicant's wife indicates that she does not want to jeopardize her son's education and ties to his biological father, the evidence in the record does not indicate that her concerns would cause her extreme hardship.

In sum, although the applicant's spouse claims hardships based on family separation and relocation, the evidence in the record does not support a finding that the hardships of relocation, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or relocation. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.