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



#5



Date: **APR 19 2011**

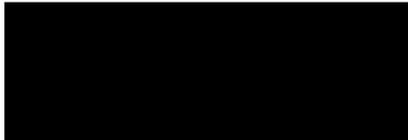
Office: MIAMI, FLORIDA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami, Florida. The matter 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated November 25, 2008.

On appeal, counsel contends the applicant established the requisite hardship, particularly considering that the applicant's wife, Ms. [REDACTED] is suffering from mental health problems and considering the country conditions in Colombia.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on February 21, 2003; a letter and an affidavit from Ms. [REDACTED] a letter from Ms. [REDACTED] physician and copies of prescription medications; a letter from a psychotherapist; copies of tax returns, bills, and other financial documents; documentation of the couple's business; copies of photographs of the applicant and his family; a copy of the U.S. Department of State Country Reports on Human Rights Practices for Colombia; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that he attempted to enter the United States on March 24, 2002, by presenting a photo-switched Colombian passport. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

A waiver of inadmissibility under section 212(i) of the Act is dependent 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 children 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding

that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. ██████ was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the applicant’s wife, Ms. ██████ states that when she met her husband in 2002, she was going through a depression. Ms. ██████ states that her husband is her true love and that she cannot imagine being without him. In addition, Ms. ██████ contends she is suffering from acute stress disorders with uncontrolled anxiety, frequent panic attacks, major depression, thoughts of suicide, and frequent precordial palpitations. She states that her husband takes her to the doctor, cleans, cooks, and takes care of everything when she is depressed. She states she wants to have a family and wants to be able to give their future kids all of the opportunities available in the United States. In addition, Ms. ██████ contends she cannot see herself leaving the United States because she is a native of Miami and would lose everything, including her job and her family. *Letter from* ██████ dated November 30, 2006; *Affidavit of* ██████ dated December 17, 2008.

A letter from Ms. ██████ physician states that she came to the office complaining of acute stress disorder with uncontrolled anxiety, frequent panic attacks, major depression disorder, ideas of suicide, and frequent precordial palpitations with precordial oppression. The physician states that Ms. ██████

needs psychotherapy and prescribed her medications for her panic attacks, anxiety, and depression. *Letter from Dr. Jose R. Rodriguez-Acosta*, dated December 4, 2008. Copies of the prescriptions are included in the record.

A letter from a psychotherapist states that Ms. [REDACTED] was evaluated as part of the immigration process. According to the psychotherapist, Ms. [REDACTED] is “a victim of Trauma, resulting in Acute Stress Disorder, Major Depressive Disorder, [and] Generalized Anxiety Disorder,” arising from her husband’s immigration situation. The psychotherapist contends Ms. [REDACTED] denies having had any mental health problems before the current immigration situation and denies suicidal ideations or plans. The psychotherapist states Ms. [REDACTED] reported numerous symptoms directly related to her husband’s immigration situation, including, but not limited to: a lack of appetite, headaches, fatigue, stomach problems, sleep disturbances, panic, vertigo, depression, anxiety, palpitations, and problems with memory. The psychotherapist contends Ms. [REDACTED] is experiencing a grave emotional situation that she would be unable to adequately treat in Colombia and recommends she continue psychotherapy and psychiatric treatment. *Letter from [REDACTED]*, dated December 5, 2008.

After a careful review of the record, the AAO finds that if Ms. [REDACTED] had to move to Colombia to be with her husband, she would experience extreme hardship. The record shows that Ms. [REDACTED] was born in the United States and that she and her husband have started their own company. Moreover, as counsel contends, country conditions in Colombia are precarious. The U.S. Department of State warns U.S. citizens of the dangers of travel to Colombia due to terrorist activity and violent crime. *U.S. Department of State, Travel Warning, Colombia*, dated November 10, 2010. Considering these unique factors cumulatively, the AAO finds that if Ms. [REDACTED] had to move to Colombia, the hardship she would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, Ms. [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Ms. [REDACTED] emotional hardship claim that she cannot imagine her life without her husband is a difficulty that is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding her mental health, the letters from her physician and the psychotherapist fail to provide sufficient details regarding her purported conditions and, in fact, appear to contradict one another. For instance, the letters do not address the prognosis or severity of Ms. [REDACTED] mental health problems. In addition, the letter from Ms. [REDACTED] physician states that she had “ideas of su[i]cide,” *Letter from [REDACTED] supra*; however, the letter from the psychotherapist explicitly states that Ms. [REDACTED] denied having suicidal ideations. *Letter from [REDACTED] supra*. Similarly, Ms. [REDACTED] contends she “was going through a depression” when she met her husband in 2002, *Letter and Affidavit from [REDACTED] supra*; however, the letter from the psychotherapist states that she denied having any past mental health problems before this present immigration situation. *Letter from [REDACTED]* Furthermore, regarding the letter from the psychotherapist, although the input of any mental health professional is respected and valuable, the AAO notes that the letter in the record appears to be based on a single evaluation the psychotherapist conducted with Ms. [REDACTED]. The record fails to reflect an

ongoing relationship between a mental health professional and the applicant's wife. Therefore, the conclusions reached in the submitted letter, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the letter's value to a determination of extreme hardship.

The AAO notes that although the record contains numerous financial documents, the applicant has not made a financial hardship claim.

To the extent Ms. [REDACTED] contends she wants to have children and raise her family in the United States, even assuming the couple has children in the future, as stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to Ms. [REDACTED] the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, 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, 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.