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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

Date: JUL 0 6 2011 Office: NEWARK, NEW JERSEY FILE: [redacted]

IN RE: [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:

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 making material misrepresentations in his visa application in order to procure a visa. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his qualifying spouse.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated March 6, 2009.

On appeal, the applicant's attorney provided a brief in support of the applicant's waiver application. In the brief, the applicant's attorney contends that the qualifying spouse has strong ties to the United States, including her mother and two siblings. Further, the applicant's attorney asserts that the qualifying spouse takes care of her mother, who has medical issues, and her two siblings, one of whom has learning difficulties. The applicant's attorney also states that neither of the qualifying spouse's parents speak English, so she acts as an English teacher to her siblings. In addition, the applicant's attorney contests the inadmissibility of the applicant indicating that the applicant's misrepresentations were not willful because he was unaware of any misrepresentation at the time and did not intend to defraud the United States government. Moreover, the applicant's attorney contends that the applicant did not have any knowledge of the falsity of his statements because his mother was responsible for renewing his visa through a travel agency.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief written on behalf of the applicant, a statement by the qualifying spouse's mother, an affidavit from a psychologist, medical documents regarding the qualifying spouse's mother, documents regarding the qualifying spouse's sibling's learning disability, a letter from the qualifying spouse, an affidavit from the applicant, an approved Petition for Alien Relative (Form I-130), the qualifying relative's naturalization certificate, a marriage certificate and other documentation submitted with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for making material misrepresentations in his visa application in order to procure a visa and admission to the United States.

The applicant's attorney contests the applicant's inadmissibility indicating that his misrepresentations were not willful because he did not intend to defraud the United States government and was unaware of the contents of the visa applications submitted on his behalf in 1997 and 2002. Specifically, the applicant's attorney contends that the applicant did not have any knowledge of the falsity of his statements and was unaware of his misrepresentations because his mother was responsible for renewing his visa through a travel agency. However, the only evidence provided to substantiate these assertions was an affidavit from the applicant's mother stating that she submitted the visa applications for the applicant with the assistance of a travel agency. No proof was provided regarding the travel agency who allegedly filed the visa applications for the applicant. Moreover, the visa applications were signed by the applicant, and the AAO notes that a B1/B2 visa application dated August 14, 2002 was submitted while the applicant was living in the United States and indicated that he resided in Colombia and had remained in the United States for only 15 days in March 2000. The applicant states that he did not depart the United States after his March 2000 entry. He does not explain how a visa application stating he lived in Colombia could have been signed by him and submitted and the visa affixed to his passport without him providing the passport and otherwise being aware of the application and its contents. As such, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for misrepresenting a material fact to obtain a U.S. visa.

Section 212(i) of the Act provides that:

> 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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. 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).

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*, 138 F.3d at 1293 (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.

The applicant's qualifying relative is his wife, a United States citizen. The documentation provided that specifically relates to the qualifying relative's hardship includes Form I-601, Form I-290B, an appeal brief written on behalf of the applicant, a statement by the qualifying spouse's mother, an affidavit from a psychologist, medical documents regarding the qualifying spouse's mother, documents regarding the qualifying spouse's sibling's learning disability, a letter from the qualifying spouse, an affidavit from the applicant and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney contends that the qualifying spouse has strong ties to the United States including her mother and two siblings. Further, the applicant's attorney asserts that the qualifying spouse takes care of her mother, who has medical issues, and her two siblings, one of whom has learning difficulties. The applicant's attorney also states that neither of her parents speaks English, so she teaches her siblings English.

Based on the evidence on the record, the AAO finds that the applicant has not established that his wife will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney contends that the applicant's wife would suffer extreme hardship if her husband is deported because she would have to make "a difficult decision" of staying with her family to care for them or leaving her family to accompany her husband. If she remains in the United States without her husband, an affidavit from the psychologist indicates she may experience psychological hardships. The psychologist diagnosed the qualifying spouse with Adjustment Disorder and Mixed Anxiety and Depressed Mood as a result of the qualifying spouse's fear of the applicant's removal. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. In the affidavit, the psychologist also states that the qualifying spouse has had "serious infections from ovarian cysts," yet no documentary evidence was provided to support such assertions. Assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the applicant has not met his burden to demonstrate that the qualifying spouse would face extreme hardship upon separation from the applicant.

The applicant's attorney also asserts that the qualifying spouse cannot relocate to Colombia because she takes care of her mother and siblings. The qualifying spouse states in a letter, submitted with her initial waiver application, that she "helps her [mother] economically and

emotionally" and that "she would not be able to get around without [her] help." The record also contains some medical documentation regarding the qualifying spouse's mother. One document, a letter from a medical office, indicates that the qualifying spouse's mother has a "history of: cardiac pacemaker, pain in joint involving multiple sites, sprain of unspecified site of back, iron deficiency anemia, history of gastric-bypass surgery." Most of the other medical documents relating to the qualifying spouse's mother involve her problems with depression. While the documents, dated in 2008, mention complications that occurred following her gastric-bypass surgery in 2006, it is unclear specifically how the qualifying spouse's mother's life was affected by any complications, how the qualifying spouse is currently assisting her emotionally or otherwise, and whether the qualifying spouse's father is unable to assist his wife. Moreover, notes written by the medical professional indicate that the qualifying spouse's mother "can perform domestic chores that don't demand physical strain." Further, the applicant failed to provide any proof that the qualifying spouse is providing economic support to her family or any proof to demonstrate that the qualifying spouse's mother requires economic assistance.

The record also contains documentation regarding the qualifying spouse's sibling's learning disability. There is a progress report for her brother which recommends that he "continue to receive occupational therapy services in a group of three." Another scholastic Health and Physical Development document indicates that he will "continue benefitting from physical therapy" for his coordination issues. There is no explanation as to how the qualifying spouse specifically provides care for her brother, and the AAO notes that the qualifying spouse lives in [redacted] New Jersey and her mother lives in [redacted] New York. The record is therefore unclear as to the extent of assistance that the qualifying spouse can provide to her mother and siblings considering she does not live in close proximity to them.

The qualifying spouse's hardship letter also indicates that her husband's children are in the United States and it appears she is asserting that they would also return to Colombia, should the applicant be found inadmissible. The qualifying spouse also contends that she would face safety concerns and financial hardships if she were to relocate to Colombia with her husband and his children. However, the record contains no documentation regarding conditions in Colombia, particularly in the location where the applicant and qualifying spouse would reside. The applicant's spouse would have to leave her employment if she left the United States, but this is a common result of removal or inadmissibility, and the applicant has failed to submit detailed evidence concerning his spouse's current employment and available employment opportunities in Colombia. Even were the AAO to take notice of general conditions in Colombia, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant's spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158 at 165. The applicant therefore failed to provide sufficient evidence to establish that his spouse would experience extreme if she relocated to Colombia with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying spouse, considered in the aggregate, rise 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 United States citizen 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, the appeal will be dismissed.

ORDER: The appeal is dismissed.