

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

[Redacted]

HS

Date: JUL 13 2011 Office: MIAMI, FL 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.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Colombia and a citizen of Colombia and Mexico 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 having attempted to procure admission into the United States by fraud or willful misrepresentation on February 22, 2001. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision, dated September 25, 2010, the acting field office director found that the evidence presented in the record addressed only the hardship the applicant would experience and did not address the hardship that her spouse would experience as a result of her inadmissibility. He concluded that the applicant presented no evidence of hardship to her spouse, her only qualifying relative in this case. Accordingly, the applicant's waiver application was denied.

In a Notice of Appeal to the AAO (Form I-290B), dated October 22, 2010, counsel states that the applicant did not present evidence, beyond a statement from her spouse, regarding the hardship he would face because he believed the Drug Enforcement Agency was intervening in the case in order for his wife to be granted a waiver. Counsel states that he is submitting evidence of hardship on appeal.

The record indicates that on February 22, 2001, during the visa interview for her son, the applicant presented a fraudulent Mexican passport in her son's name. At the time of the interview she stated that she paid someone \$2,500 for the passport. She also stated that although her child was born in Mexico, she was not able to obtain a valid passport for him without his father present and his father was serving a prison sentence in the United States.

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, in pertinent part:

- (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 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.

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 spouse 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-Morales*, 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 record of hardship includes: counsel's brief, a statement from the applicant's spouse, news articles concerning the applicant's spouse's arrest for his involvement in a major international drug trafficking operation, court records regarding the applicant's spouse's reduction in sentencing in exchange for providing information to the U.S. government, a letter from the Drug Enforcement Agency regarding hardship to the applicant's spouse, official documents regarding the applicant's brother's death in Colombia, a newspaper article regarding the applicant's brother's death in Colombia, and country condition information on Colombia and Mexico.

In his statement, dated October 22, 2010, the applicant's spouse states that he is currently living in Miami with his wife and two U.S. citizen children. He states that they had been residing in Mexico when he was arrested and extradited to the United States. He states that he was indicted and served prison time for his involvement in the drug trade and is now trying to make up for lost time with his family.

He states that returning his spouse to either Mexico or Colombia would be an extreme hardship for him and his children. He states that separating minor children from their mother is an undue hardship and that his work hours are very long and that not having his wife's help with the children would be an extreme hardship. The applicant's spouse states further that if the applicant is returned to Colombia or Mexico she will be under the constant threat of kidnapping or death. He states that after his arrest in 2000, the applicant's brother was kidnapped in Colombia, interrogated, threatened, and then finally released. The applicant's spouse states that he believes it was a cartel group who kidnapped his brother-in-law and questioned him concerning where the applicant was living, how much she knew about the drug trade, where his children were, and whether he was reaching an agreement to testify against them to have his sentence reduced. The applicant's spouse states further that while he was in prison he cooperated with U.S. law enforcement on many cases, testifying in court against indicted drug cartel members. He also states that while out of prison he continues to cooperate with the U.S. government, testifying in two high profile cases. The applicant's spouse feels that his cooperation with the U.S. government puts his wife at risk for kidnapping or death if

she were to return to Mexico. He states that the applicant's brother, the same brother who was kidnapped and interrogated, was assassinated in Colombia in February of 2010. Extensive documentation in the record substantiates the applicant's spouse's claims. We also note that a newspaper article and death certificate from Colombia establish that on February 12, 2010 the applicant's brother was shot in the head and neck by an unknown assailant on a motorcycle.

We find that the applicant's spouse and children would suffer extreme hardship as a result of the applicant's inadmissibility. Given the applicant's spouse's extensive cooperation with the U.S. Government, we find that separating the applicant's family, with the applicant living alone in Mexico or Colombia, would put the applicant at a great safety risk, while relocating the whole family to Mexico or Colombia would then put the entire family's safety at risk. It is reasonable to believe that any member of the applicant's family would be at risk of violence, kidnapping, and/or death upon relocating to Mexico or Colombia. Given the unique circumstances of this case, we find it to be extreme hardship for the applicant's spouse and children either to risk their lives abroad or to live in constant fear of their wife and mother being harmed (should they not relocate).

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's misrepresentation at the visa interview for her son.

The favorable factors in the present case are the extreme hardship to the applicant's spouse and two children if the applicant were found to be inadmissible to the United States and the applicant's role as a supportive mother and wife. There is no evidence to indicate that the applicant had any knowledge or involvement of her spouse's criminal conduct. Consequently, we will not consider his past criminal conduct as a negative factor in her case.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.