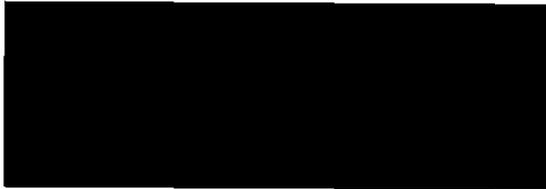


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



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



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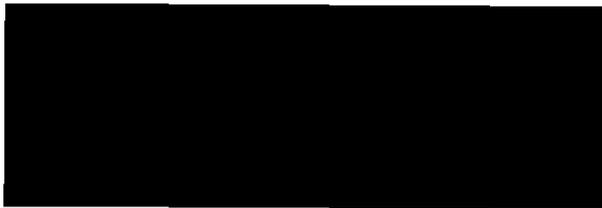
DATE: **AUG 24 2012** OFFICE: PANAMA CITY, PANAMA

File: 

IN RE: Applicant: 

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 District Director, Panama City, Panama and 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by 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 reside in the United States with his lawful permanent resident mother.

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. *See Decision of the District Director*, dated August 12, 2010.

On appeal, counsel asserts that the applicant is not inadmissible and, in the alternative, if the waiver is not granted the applicant's lawful permanent resident mother will suffer extreme hardship. *See Counsel's Appeal Brief*, dated November 16, 2010.

The record contains, but is not limited to: Form I-290B, counsel's brief and earlier letter in support of adjustment of status and waiver; various immigration applications and petitions; a hardship affidavit; a statement from the applicant; medical and financial records; and Colombia country conditions printouts. The entire record was reviewed and considered in rendering this 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 shows that in or about 1997, the applicant presented to the U.S. Embassy in Panama City, Panama his valid Colombia passport containing a counterfeit United States visa. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). Counsel asserts that the applicant is not inadmissible because he did not know that the visa placed in his passport was fraudulent. The applicant indicates that after his mother, brother and stepfather immigrated lawfully to the United States, his mother filed a petition for alien relative on his behalf, which was approved on June 19, 1998. He maintains that the petition's approval had been earlier delayed when "some inconveniences" appeared as a result of a typing error in his name, and that his mother traveled to Colombia to resolve them. The applicant states that because he wanted to travel as soon as possible to the United States, he paid an intermediary who "supposedly worked in a travel agency 12 years ago" and who represented that he or she "transacted visas to travel to the United States." According to the applicant, this

individual would be "in charge of everything" and would notify him when the "passports arrived with the visa stamped." The applicant contends that it was a great surprise to him when he learned that the visa placed in his passport by the intermediary was counterfeit. The record shows that the applicant knowingly chose to circumvent lawful United States visa procedures with which he was already familiar and had been growing impatient, and instead pay an individual who was known not to be a representative of the U.S. government to obtain a visa for him, relinquishing both his old and new passport to that individual, and appearing for a visa interview related thereto. The applicant has failed to demonstrate that he did not have the requisite knowledge of his fraudulent visa or intent to misrepresent in order to obtain a visa with which he intended to enter the United States. Pursuant to Section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility rests solely on the applicant. Accordingly, the AAO concurs with the District Director that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is the only qualifying relative. 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-I-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 reflects that the applicant's mother is a 68-year-old native of Colombia and lawful permanent resident of the United States. She writes that she has been separated from the applicant since 1993 and has suffered extreme emotional distress and anxiety due to being unable to have a "normal relationship" with her son during their lengthy separation. Further details concerning her

distress or anxiety have not been provided. The applicant's mother maintains that she needs the applicant because of her age and medical condition, though the record does not reflect that she has ever resided with the applicant in the United States or otherwise relied on his assistance. She states that she underwent a hysterectomy in November 2007, and that in July 2008 a malignant tumor was removed from her right breast. Documentary evidence confirms the hysterectomy and shows that a biopsy was conducted in July 2008 following an abnormal breast exam finding. No evidence has been submitted concerning the applicant's mother's health currently or any ongoing care required with regard to either condition. She explains that she needs the applicant in the United States so he can help support her, provide transportation to medical appointments, and pay for her medical bills. The applicant's mother explains that she has another son, Hector, in the United States but she cannot count on him for meaningful support because he has his own child, responsibilities and bills to pay. She does not address whether her son Hector, her husband Orlando, or any another individual has been providing transportation to and from medical appointments in the applicant's absence. Concerning her husband, the applicant's mother writes that he is retired, does not work, and "now is diabetic with high blood pressure." Medical records for the applicant's stepfather have not been submitted. Nor have financial records demonstrating the applicant's mother's income from any source. The applicant's mother writes that she is retired but continues to work in New Jersey as a packer for a cosmetics company. The record shows that the applicant's mother relocated to Florida in or before August 2010, yet no updated information or documentation concerning her employment status there has been submitted on appeal. Counsel asserts that the applicant's mother and stepfather are "totally dependent on Social Security benefits and Medicaid." Corroborating documentary evidence has not been submitted for the record.

The AAO recognizes the applicant's mother desires to have her son by her side and that he may indeed provide some of the support and familial companionship she seeks. The evidence does not demonstrate, however, that the applicant's mother is unable to meet her financial obligations or secure transportation to medical appointments without the applicant or that the challenges described rise beyond those ordinarily associated with the inadmissibility of a loved one.

The AAO acknowledges that separation from the applicant for nearly two decades has caused various difficulties for the applicant's mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

In the applicant's mother's affidavit, she does not address the possibility of relocating to Colombia to be with the applicant. Counsel asserts that the applicant's mother would experience extreme hardship due to separation from her husband and son in the United States, as well as country conditions in Colombia where "the standards of security, safety and supervision may not reach those expected in the United States." Counsel points to the U.S. State Department's *Colombia: Country Report on Human Rights Practices-2008*, in which unlawful and extrajudicial killings, forced disappearances, and torture and mistreatment of detainees are reported. Counsel fails to relate such occurrences to the applicant's mother. Counsel contends that both crime and unemployment are problems in Colombia where "it would be impossible" for the applicant's mother and stepfather to obtain gainful employment. While the record shows that crime is a problem in Colombia, the record does not demonstrate that the applicant's mother or stepfather

would be unable to secure employment there. The AAO has additionally reviewed the current U.S. State Department's *Colombia Travel Warning*, dated February 12, 2012. The report shows and the AAO recognizes that while security in Colombia has greatly improved and the incidence of kidnappings have diminished significantly, terrorist activities remains a threat throughout the country and violence by narco-terrorist groups continues to affect some rural areas and large cities.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's mother including that she has not resided in Colombia since 1993; separation from family ties in the United States including from her lawful permanent resident husband were he not to join her upon relocation, and her U.S. citizen son, Hector, and his family; and stated economic, employment, and safety concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's lawful permanent resident mother would suffer extreme hardship were she to relocate to Colombia to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his mother faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.