

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



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Date: **DEC 19 2012**

Office: PANAMA CITY, PANAMA

FILE: 

IN RE: 

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:

SELF-REPRESENTED

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 in accordance with the instructions on 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a lawful permanent resident son. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her family.

In a decision, dated January 13, 2011, the field office director found that the applicant failed to submit sufficient evidence to support her spouse's claims of hardship and that the applicant failed to address the hardship her spouse would experience if he were to relocate to Colombia. The waiver application was denied accordingly.

On appeal, the applicant states that her spouse is and will continue to suffer extreme hardship as a result of her inadmissibility. She states that her spouse has no family ties outside the United States, many family ties in the United States, and could not relocate because of the country conditions in Colombia. The applicant also states that her spouse would suffer financial and medical hardship as a result of her inadmissibility.

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 indicates that on June 3, 2007, the applicant applied for admission to the United States at the Miami Port of Entry by presenting her valid B1 visitor's visa. The applicant was referred to secondary inspection as a possible immigrant without an immigrant visa. At secondary inspection a fraudulent social security card and a Dade County Florida public schools employment application were found on her person. A check of the social security number on the applicant's fraudulent social security card showed that the card had been used for employment purposes on previous occasions. The applicant testified that she had travelled to the United States numerous times before and never overstayed her visa. She stated that on past visits she had been employed at a McDonald's in Florida, that her son was a lawful permanent resident, and that she met a man three months ago on the internet with whom she was planning to visit. She stated that her son could have petitioned for her, but she thought it would be quicker to marry a U.S. citizen. The applicant was expeditiously removed on June 4, 2007 and on September 25, 2007, in Bogota, Colombia, she was married to her current spouse and the man she had planned to visit upon her entry in June. Thus, taking the totality of the circumstances surrounding the applicant's attempted entry into the United States on June 3,

2007, we find that the applicant misrepresented her immigrant intent in an attempt to gain admission to the United States.

The AAO notes that the applicant contends that she did accept employment from a friend in Florida, that she believed the social security card she obtained to be a legal document allowing her to work, and that she never used this document to work. As stated above, the record establishes that someone used the social security number in question for employment in the past. We also note that the applicant's act of presenting a social security card to work in the United States is not the misrepresentation making her inadmissible under section 212(a)(6)(C)(i) of the Act, but her presenting a nonimmigrant visa to enter the United States when she had the immigrant intent to marry a U.S. citizen, reside in the United States, and become employed in the United States, is the misrepresentation making her inadmissible 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 or her child 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-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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 a statement from the applicant, a statement from the applicant's son, a statement from the applicant's mother-in-law, medical documents, documentation of community ties to the United States, unemployment records for the applicant's spouse, photographs, and country conditions information for Colombia.

The AAO finds that the applicant's spouse has established that he would suffer extreme hardship as a result of relocation, but has not established extreme hardship as a result of separation.

The applicant claims that her spouse will suffer extreme emotional hardship as a result of relocating to Colombia because he is 62 years old and has lived his whole life in the United States; he does not speak Spanish; all of his family lives in the United States; he is the only child able to care for his 84 year old mother; and the country conditions in Colombia are not safe. The record indicates that the applicant's spouse is the oldest of six siblings, has a U.S. citizen daughter, and two grandchildren living in Florida. The record indicates through a statement from his mother that the applicant's spouse has been unemployed for four years, lives with her, and helps to care for her daily needs now that her husband is dead. A letter from the applicant's spouse's sister states that there are no other siblings who can care for their mother because they either have fulltime employment or live hundreds of miles away. In addition, the record includes a letter from the applicant's mother-in-law's doctor stating that she requires the applicant's spouse to manage her everyday care.

The record indicates further that Colombia has experienced car bomb attacks in Bogota and that the potential for violence and other attacks exists throughout the country. We note that the most recent U.S. State Department Travel Warning, dated October 3, 2012, warned U.S. citizens to exercise caution and remain vigilant while travelling in the country as violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. We find that in this case country conditions alone would not make relocation to Colombia an extreme hardship. However, taking into consideration the applicant's age; that he has never lived outside the United States; that his entire family, including a daughter and two grandchildren, live in the United States; that he cannot speak Spanish; that he is the sole caretaker for his elderly mother; as well as the current situation in Colombia, the applicant has shown that her spouse would suffer extreme hardship as a result of relocation.

The AAO notes that on October 4, 2012, the applicant submitted updated medical documentation indicating that he is seriously ill, will be in the hospital for several weeks, and will require care when he returns home. This submission also included a letter from the applicant's spouse's mother stating that she cannot help to care for him and that he needs his wife in the United States. We find that this evidence shows further that the applicant's spouse would suffer extreme hardship as a result of relocation given that he is critically ill. However, this evidence does not indicate that he would suffer extreme hardship as a result of separation. Although the record shows that the applicant's spouse's mother cannot help to care for him while he is ill, the record does not indicate that the applicant's spouse could not receive care from other family members, particularly his adult daughter.

In regards to the other evidence in the record submitted in support of extreme hardship upon separation, the applicant has not shown that her spouse would suffer extreme hardship as a result of separation. The applicant claims that her spouse is suffering extreme emotional and financial hardship as a result of their separation. On June 3, 2007, during secondary inspection, the applicant stated that she met her spouse on the internet, three months prior to her attempting to enter the United States in June 2007, indicating that the applicant and her spouse married after only six months of communication.<sup>1</sup> The record does not indicate that the applicant and her spouse spent any

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<sup>1</sup> We note that despite her June 2007 statements to immigration officers, the applicant asserts, in a statement dated October 19, 2009, that she met her spouse at her son's home in 2006.

period of time living together as a couple or husband and wife. The AAO recognizes that the record includes documentation stating that the applicant's spouse suffers from a history of depression and anxiety, exacerbated by the applicant's absence, and that his employment and finances are suffering as a result. We find that the record does not fully support these statements. The record indicates that the applicant's spouse is a carpenter by trade and has been unemployed for four years, but no other details are provided regarding his employment or financial situation. Furthermore, the medical documentation in the record indicates that the applicant's spouse has a history of depression and is currently prescribed Zoloft. The record does not provide any details about the symptoms and severity of the applicant's spouse's condition or how this condition has worsened as a result of the applicant's absence. Thus, we find that the record does not establish that the applicant's spouse would suffer hardship rising to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, 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.