

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

[REDACTED]

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DATE: DEC 20 2012 OFFICE: ST. LOUIS, MO

FILE: [REDACTED]

IN RE: APPLICANT: [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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Louis, Missouri, 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 has resided in the United States since June 30, 2002, when she was paroled in after presenting a photo-substituted visa for admission. She 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 to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 11, 2007. A form I-290B, Notice of Appeal, was filed on January 10, 2008 and received by the AAO on May 3, 2011.

On appeal, counsel contends the applicant is not inadmissible for fraud or willful misrepresentation of a material fact because she did not know the visa she obtained and presented was fake. Counsel additionally asserts that if she is found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, her spouse would experience extreme hardship given her inadmissibility.

The record includes, but is not limited to, statements from the applicant and her spouse, documentation of removal proceedings, evidence of birth, marriage, divorce, residence, and citizenship, letters from family and friends, copies of Foreign Affairs Manual sections, financial documents, correspondence, medical records, a psychological evaluation, articles on psychological and medical issues, articles on country conditions in Colombia, and photographs. 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:

- (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:

- (1) The [Secretary] may, in the discretion of the [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

[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.

The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977). *Knowledge of the falsity of a representation is sufficient. Id., citing Matter of Hui*, 15 I & N Dec. 288 (BIA 1975).

In the present case, the record reflects that the applicant married a lawful permanent resident on June 8, 2002. She claims she was referred to a Colombian travel agency by friends and family, who told her the visas obtained there were legal. She stated under oath that she paid \$6,000.00 to a Colombia travel agency to obtain a nonimmigrant visa. The applicant further explains that she paid the visa fees to a local bank, gave that receipt, passport photos, and her passport to the travel agency, and paid them half of the \$6,000 fee. She adds that when the travel agency gave her the B-2 visa she thought it was legitimate, and she did not know she had a fake visa until after she presented it to U.S. immigration officials for admission into the United States. Counsel submits portions of the U.S. Department of State Foreign Affairs Manual (FAM) to show that travel agencies are part of a normal visa application process, as well as two letters from friends in Colombia indicating they referred the applicant to that specific travel agency because they knew all agency's processes were legal.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In the present case, the applicant has failed to meet her burden of demonstrating that she did not know the visa she presented was fraudulent. Although the AAO acknowledges the FAM allows for use of travel agents, the applicant does not present any evidence to show it was reasonable for her to pay a travel agency \$6,000 to facilitate a legitimate B-2 nonimmigrant visa application, when services included "providing the forms and information, to assistance in completing the application, to actual submission of the application." *See 9 FAM § 41.103, PN 5*. Furthermore, although the applicant submits letters from friends stating they referred the applicant to the travel agency knowing the agency's processes were legal, the two letters contain almost identical language, and do not discuss the circumstances of the referral in any detail, including how they knew the processes were legal. The letters are not substantive evidence, and fail to assist the applicant in meeting her burden of proof. Given the evidence of record, the AAO finds that the applicant has not established that she did not know that she was not paying for a legitimate visa application.

As such, despite counsel's assertion to the contrary, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain admission by fraud and/or misrepresentation. The AAO thus concurs with the Field Office Director that the applicant

is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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.

Counsel for the applicant indicates that the applicant's spouse has suffered psychological hardship due to the impending separation. The spouse contends he loves and needs the applicant, that he would fall apart without her, and may need medication to deal with emotional issues if they are separated. An evaluation from a licensed clinical social worker indicates the applicant's spouse has been diagnosed with adjustment disorder with anxiety and depression, which, according to the social worker, will worsen upon separation. The applicant submits birth certificates for her two U.S. born children as well as letters from family and friends to show the family's close relationship. The applicant states that his spouse takes care of the house and children while he works. In support of assertions of financial hardship, the applicant submits a letter from her spouse's employer indicating his 2007 income was \$46,597.00. Copies of household bills are submitted as evidence of expenses.

The applicant's spouse claims he, his family, and the applicant's family have all been victims of violence in Colombia. The spouse expresses fear that if he, the applicant, and their children return to Colombia they would be subject to violence again. Articles on country conditions in Colombia are submitted in support. The spouse moreover states that his parents and two siblings all live in the United States, they share a close relationship, and it would cause him distress to be separated from them. He indicates he would additionally suffer from financial hardship upon relocation because the per capita annual income in that country is too low for a family of four, and he would not be able to find a job in his current field because he is not certified as an accountant in Colombia. The spouse claims he would also worry about access to medical care and good educational facilities, in addition to culture shock for the children. The children's physician indicates they are healthy children with normal growth and development. Documentation on education, medical care, and the economy in Colombia is submitted.

Despite submission of evidence on income and expenses, the record does not demonstrate that the spouse's household expenses exceed his income. The applicant further fails to provide any

evidence on whether she would be able to contribute financially while in Colombia or in the United States, or on whether her departure would significantly impact her spouse's financial situation. Given the evidence of record, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The AAO acknowledges that the applicant's spouse would experience psychological hardship upon separation from the applicant, as well as other difficulties. However, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Colombia without her spouse.

The record reflects that the applicant's spouse, though a native of Colombia, has family ties in the United States, and that he has worked for the same employer since 2005. The spouse's concerns about education and medical care in Colombia are supported by evidence of record, and his assertions on past issues he has had with safety in Colombia are somewhat corroborated by evidence on country conditions. The AAO further notes that the U.S. Department of State issued a current travel warning on Colombia, which indicates although security in that country has improved significantly in recent years, including in tourist and business travel destinations such as Cartagena and Bogota, violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. *Travel Warning: Colombia, U.S. Department of State*, October 3, 2012.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Colombia.

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 in 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 in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her U.S. 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 a 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.