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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

[redacted]

H5

DATE: FEB 2 1 2012 OFFICE: MIAMI, FLORIDA 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 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, Miami, Florida 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 fraud or 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 remain in the United States with her lawful permanent resident spouse.

The Field Office 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 Field Office Director,* dated May 20, 2009.

On appeal, counsel asserts extreme hardship of an emotional and economic nature. See *Form I-290B*, Notice of Appeal or Motion, received June 22, 2009.

The record includes, but is not limited to: Form I-601 and denial letter; counsel's brief; hardship affidavit; psychological evaluation; applicant's statement; certificates of achievement; character reference letters; human rights report printout; need for nurses printout; bank account and mortgage statements; income tax and wage/earnings records; marriage and birth records; family photos; records concerning the applicant's unlawful U.S. entry; her signed sworn statement; immigration court records and removal orders from two immigration judges; and 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 on June 27, 2002, the applicant entered the United States by presenting a photo-substituted and biographical data-altered visa. She was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not dispute this finding, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) 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 his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse 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-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 record reflects that the applicant's spouse is a 36-year-old native and citizen of Cuba and lawful permanent resident of the United States. He states that separation from his wife will affect him emotionally, physically, psychologically and in all areas of life including his ability to work. See *Hardship Affidavit*, dated July 15, 2009. No documentary evidence has been submitted that addresses the applicant's physical health or ability to work. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)).

The applicant's spouse states that he would experience isolation and depression like he did in New York as a young man separated from his family in Cuba. See *Hardship Affidavit*, dated July 15, 2009. He states that the applicant means everything to him emotionally and is both his partner and the only family he has in the U.S. *Id.* In a *Psychological Evaluation*, dated January 5, 2009, [redacted] asserts that while the applicant's spouse displays little emotional affect outwardly, this seems to be his façade needed for him to remain functional. *Id.* [redacted] diagnoses the applicant's spouse with an Adjustment Disorder with Mixed Anxiety and Depressed Mood and asserts that separation will "lead to a disruption of his defense mechanisms, a decline in psychological functioning, an increase in symptoms, a decline in proper judgment, a functional decline, and thus he will most likely suffer emotional hardship." *Id.* He states that the applicant's

spouse would benefit from individual therapy focusing on appropriate expression of emotions and coping skills. *Id.* The AAO has considered evaluation but the record does not establish that the applicant's spouse's psychological difficulties go beyond the normal hardships associated with the removability or inadmissibility of a family member. Given the evaluation is based on self-reporting by the applicant's spouse and considering statement that the applicant's spouse would benefit from individual therapy, there is insufficient evidence to establish that the applicant's spouse would suffer significant psychological hardship in the event of separation.

Counsel asserts that when the applicant completes her nursing studies she will be able to obtain a job that pays well and contribute to the United States where there is a scarcity of nurses. See *Counsel's Brief*, dated July 16, 2009. The AAO notes that while a higher contribution by the applicant would increase the couple's overall household income, the evidence is insufficient to establish that the applicant's spouse would be unable to support himself in his wife's absence.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. 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.

Addressing relocation, counsel asserts that the applicant's spouse "will not be able to make a living and provide for his wife in Colombia. He will be an illegal in that country." *Counsel's Brief*, dated July 16, 2009. The record contains no documentary evidence that the applicant's spouse would be legally barred from employment in Colombia should he decide to relocate there to join his wife. Counsel asserts that "there is no way in the world" the applicant's spouse "could survive by himself in Colombia without receiving subsidies from the USA." *Id.* The evidence is insufficient to support this assertion.

Counsel asserts that the applicant's spouse is afraid for his wife because she "was persecuted in the past by the guerrillas" in Colombia. See *Counsel's Brief*, dated July 16, 2009. The record shows that the applicant withdrew – with prejudice, her application for asylum and withholding of removal, abandoning relief related to her claim of persecution. See *Final Order of the Immigration Judge*, dated January 14, 2008. Evidence of persecution was not submitted with the Form I-601 or on appeal and the evidence in the record is insufficient to establish that the applicant was persecuted in Colombia. The applicant's spouse states that as a foreigner in Colombia, he would live in fear because the country is full of kidnappings, violence, and unemployment. See *Hardship Affidavit*, dated July 15, 2009. The AAO has reviewed the U.S. State Department's *Colombia Travel Warning*, dated July 22, 2011. The warning states that security in Colombia has improved significantly in recent years and incidents of kidnapping have diminished significantly, however violence by narco-terrorist groups continues to affect some rural areas and large cities and terrorist groups and other criminal organizations continue to kidnap civilians. *Id.* While kidnapping and violent crimes occur in Colombia, the evidence in the record is insufficient to establish a significant threat therein to the applicant or her spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including that he has never lived in Colombia; U.S. employment, home ownership, and community ties; emotional concerns; employment and economic concerns; and safety concerns for himself and his wife. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Colombia to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse 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.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.