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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services



hts

DATE: **FEB 24 2012** OFFICE: KENDALL, FLORIDA

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 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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, 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 pursuant to 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 through counsel does not contest the finding of inadmissibility. Rather, the applicant seeks a waiver of inadmissibility in order to reside in the United States with his 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 Field Office Director's Decision*, dated September 29, 2009.

On appeal, counsel asserts that USCIS erroneously denied the applicant's waiver because the supporting evidence clearly demonstrates that the applicant's wife will suffer extreme hardship if the applicant were removed from the United States. *See Notice of Appeal or Motion (Form I-290B)*, dated October 28, 2009.

The record includes, but is not limited to: counsel's brief; letters of support; identity documents; a USCIS memorandum; psychological evaluation; financial and employment documents; country conditions information; police records; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides in pertinent part:

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides in pertinent part:

(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 record reflects that the applicant presented himself as a Transit Without Visa (TWOV) passenger traveling from Cali, Colombia, to Madrid, Spain on March 4, 2001. However, upon transiting in the United States, the applicant requested asylum because he feared returning to Colombia. The applicant was placed in expedited removal proceedings under 235(b)(1) of the Act and paroled into the United States, pending his expedited removal hearing. The AAO finds that, in presenting himself as a TWOV passenger when he intended to seek asylum in the United States, the applicant misrepresented a material fact. *See Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984). The AAO finds that the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed his inadmissibility on appeal.

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. Hardship to the applicant 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. 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*, 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.

Counsel contends that the equities are in favor of the applicant and finding that his spouse will experience extreme emotional and financial hardship as a result of separation from him because he has strong family ties in the United States; he and the spouse have a lengthy relationship of 7 years; the spouse is currently unemployed and depends completely on him for her financial wellbeing; and the spouse suffers from Major Depressive Disorder as a result of his possible deportation. *See I-290B Brief in Support of Appeal*, dated October 27, 2009. In support of her contentions, counsel submitted a statement from the spouse in which she discusses her relationship and feelings for the applicant and how they emotionally support one another. *See Letter of Support from [REDACTED]* dated February 18, 2009. Counsel also submitted a report from the spouse’s mental health professional in which she discusses the spouse’s current mental health symptoms and diagnosis. *See Psychological Report from [REDACTED]* dated September 19, 2009. Additionally, counsel submitted copies of the applicant and spouses’ employment and financial documents as well as billing statements.

The AAO notes that the applicant's spouse has been diagnosed with Major Depressive Disorder and may experience some emotional hardship because of separation from the applicant. However, the record is unclear concerning the number of visits for which the spouse's diagnosis is based, and the diagnosis appears to be based primarily on self-reporting: "The following symptoms have been present during the same two week period and represent a change from previous functioning ... as indicated by either subjective report or observation made by others ..." *Id.* While the AAO acknowledges the findings made in the psychological report, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by family members of inadmissible individuals.

Additionally, the AAO notes that the applicant's spouse may experience some financial hardship because of the applicant's absence from the United States. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record demonstrates that the applicant has been the primary wage earner. However, the record does not include any evidence of the applicant's employment or economic opportunities in Colombia or his inability to support his and the spouse's households in his absence. The record only includes general economic and social conditions information in Colombia, but does not demonstrate how the applicant or the spouse would be directly impacted by such conditions.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Further, counsel contends that the applicant's spouse will suffer extreme hardship if she were to relocate to Colombia because she is 53 years old and has resided in the United States for over 20 years; maintains Lawful Permanent Resident status; does not have any family ties or has ever resided in Colombia; and would unlikely find employment given her age and lack of ties to Colombia. *See I-290B Brief in Support of Appeal, supra.* In support of her contentions, counsel submitted general country conditions information in Colombia.

The AAO notes that the applicant's spouse may experience some hardship upon relocating to Colombia to be with the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The U.S. Department of State issued a Travel Warning for Colombia, indicating that U.S. citizens should be reminded that security-related concerns have improved significantly over the years in places such as Cartagena and Bogota, but violence by narco-terrorist groups continues to affect some rural areas and large cities. Also, kidnapping remains of particular concern in rural areas, and terrorist groups and criminal organizations continue to kidnap and hold civilians for ransom or as political bargaining chips. No one is immune from kidnapping because of occupation, nationality, or other traits.

The AAO notes the subjective concerns for the spouse's wellbeing in Colombia, but the record does not include any information that the spouse would be directly impacted if she were to relocate to Colombia. Also, the record does not include specific country conditions information concerning employment opportunities in Colombia and how the spouse's age would be a hindrance in her ability to find employment there. Rather, the record only includes a general statement from counsel, "... for her to obtain employment at 53 years old in a country she has never resided nor is familiar with is highly unlikely." *Id.* Moreover, the record indicates that the spouse is a native Spanish speaker, and thereby, should be able to acclimate quickly to the Colombian culture.

Although the spouse may experience some hardships as a result of relocation to Colombia with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 his Lawful Permanent Resident 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 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.