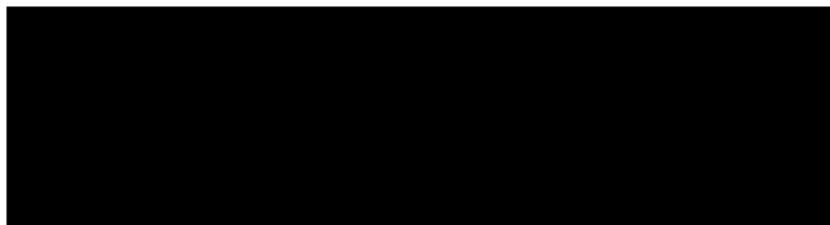


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



tl5

DATE: JUL 05 2012

OFFICE: ROME, ITALY

File: 

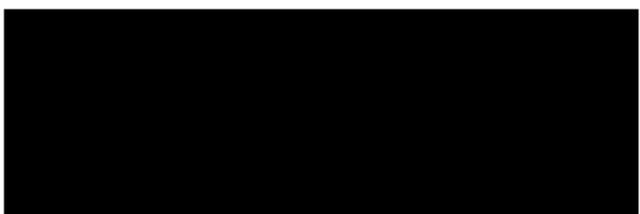
IN RE:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 spouse and adult U.S. citizen son.

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 24, 2010.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship of an emotional/psychological, economic and physical/familial nature if the waiver application is not granted. *See Counsel's Brief*, dated June 23, 2010.

The record contains but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; sworn hardship statement; psychiatrist's/psychologist's reports and letter; letters in support of the applicant and his spouse; family records and photos; and records pertaining to the applicant's inadmissibility. 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 reflects that on June 22, 1982, the applicant presented false documents in order to procure a nonimmigrant U.S. visa. Based on the foregoing, the Field Office Director found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, 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 and/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 his 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-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 applicant’s spouse is a 68-year-old native of Colombia and lawful permanent resident of the United States who has been married to the 76-year-old applicant since 1961. Psychiatrist, [REDACTED] M.D., explains that he interviewed the applicant’s spouse and sponsoring son, Harold, on two occasions for a total of four hours. He writes in June 2010 that the applicant and his spouse have been married for 50 years and have three adult children who moved their parents from Medellin, Colombia to Spain in 2000 after an explosive device went off at their doorstep. Dr. [REDACTED] relates from the interviews that Spain was initially welcoming to the couple but grew increasingly anti-immigrant which resulted in them becoming unemployable and fully dependent on their children. The applicant’s spouse was granted lawful permanent residence in October 2009 and moved immediately to [REDACTED] home in New Jersey, believing the applicant would follow shortly thereafter upon approval of his waiver application.

[REDACTED] attests that separation from his father is having a profound negative effect on his mother. He indicates that she misses her partner of five decades very much, worries constantly, and notes that they rely on each other for everything, even assisting each other to dress in the morning before they were separated. The applicant’s son contends that though his parents speak by phone daily, he notices his mother becoming progressively depressed and worried about him and fears this will take a toll on her physically as well. He explains that it is becoming more difficult both physically and financially for his mother to travel to Spain to visit his father and that having to do so for the remainder of her life would take an unspeakable toll on her.

Psychologist, [REDACTED] discloses that she is the couple’s niece but maintains this does not affect her professional assessment and opinion. Dr. [REDACTED] writes that the applicant’s spouse faces serious stress symptoms due to the preoccupation and desperation of facing her final stage of life without her companion of half a century. Dr. [REDACTED] contends that the applicant’s

spouse is at high risk for major depression, noting that this risk increases exponentially with age, is more frequent in women, and is frequently triggered by a significant loss like that of a spouse. The applicant's son notes that the economic costs incurred by his parents' separation are approximately \$10,000 per year including quarterly travel between the United States and Spain and daily telephone communication.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including her fifty-year marriage to the applicant, the emotional/psychological effects of separation from her lifelong partner, the physical impact at her advanced age, and economic difficulties. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. lawful permanent resident spouse is and would continue to suffer extreme hardship due to separation from the applicant.

Addressing relocation, Dr. [REDACTED] relays that the applicant's spouse never felt at home in Spain, always detecting an undercurrent of xenophobia. He notes that these social issues are only growing with the nation's increasing economic woes. Dr. [REDACTED] adds that though the applicant and his spouse have two adult children residing in Spain, both are married with financial worries of their own. He contrasts this with the stable economic circumstances enjoyed in New Jersey by their son, [REDACTED] who has petitioned for both his parents and is anxious to provide for them in their final years. Relocation to Colombia has not been addressed but for the explosive device incident that precipitated the family's flight to Spain. This incident, however, supports a finding that the applicant's spouse has a reasonable fear for the safety of her family members should she or they reside again in Colombia as they have already been victims of violence in the country. The AAO has considered the current U.S. State Department's Colombia Travel Warning, issued February 21, 2012, which warns that kidnappings and other violent terrorist/narco-terrorist activities, including the use of explosive devices remain a threat throughout the country.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her advanced age; fear of increasing xenophobic/anti-immigrant sentiment and repercussions in Spain; close ties to the United States – particularly to her U.S. citizen son who petitioned for her residence and intends to support her for life; economic, employment, and physical hardships; emotional and safety concerns in Colombia; and the likelihood she would lose her U.S. lawful permanent residence. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. lawful permanent resident spouse would suffer extreme hardship were she to relocate to Colombia or Spain to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any

additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. lawful permanent resident spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to the United States; attestations by others to his good moral character; and the apparent lack of a criminal record. The unfavorable factors include the applicant's immigration violation - having submitted false documents to obtain a nonimmigrant visa 40 years ago.

Although the applicant's violation of immigration law is significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

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. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.