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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



*HLS*

Date: MAY 14 2012

Office: PROVIDENCE

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,

*Maria Yeh*

*fs*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Providence, Rhode Island. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application approved.

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 procured a U.S. Visa and admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen through whom she is eligible to seek adjustment of his status to that of permanent resident. The applicant does not contest this inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and child.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, February 3, 2010.

On appeal, counsel for the applicant asserts that USCIS abused its discretion and erred in finding the applicant had not met her burden of showing undue hardship to a qualifying relative. Counsel submits a brief in support of the appeal and supplemented it with a psychological evaluation. Supporting evidence on record includes, but is not limited to, copies of: financial information, including an employment letter, tax returns, and W-2s; statements from the applicant and her qualifying relative; marriage, birth, and naturalization certificates; medical records; a Travel Warning; and country condition information. The record also contains the applicant's Applications for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an approved Petition for Alien Relative (Form I-130), an Application to Register Permanent Residence or Adjust Status (Form I-485), and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-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 qualifying relative in this case is her U.S. citizen husband. The record shows that, fearing she would be denied a nonimmigrant visa due to an approval notice dated August 9, 2005 regarding an immigrant petition filed on her behalf, the applicant presented fraudulent documents and lied to a consular officer on August 18, 2005 about her marital status and profession in order to procure a B-2 visitor's visa; she used this visa to enter the United States on September 3, 2005 at New York City and has not departed.

The applicant demonstrates that her qualifying relative would suffer extreme hardship in the event that he relocated to Colombia with the applicant. The personal safety issues cited by counsel in early 2010 have persisted or worsened, according to the U.S. Department of State's (DOS) recent Travel Warning. This February 2012 document warns U.S. citizens of the dangers of travel to and within Colombia and enumerates ongoing security concerns in that country: violence by narco-terrorist groups and terrorist activity throughout the country lead the list; although stating that kidnapping has diminished, it reports the 2011 kidnap and murder of a U.S. citizen in Medellin (several miles from Envigado, the couple's hometown and place they married); also noted is the prohibition on U.S. government officials' use of bus transportation and nighttime road travel outside urban areas. These safety concerns are corroborated by the latest DOS Human Rights Report citing unlawful and extrajudicial killings, violence against women, trafficking in women and children, kidnappings and forced disappearances among the societal problems in Colombia. The record reflects that the qualifying relative is a naturalized U.S. citizen whose fears of moving back to his birthplace after over 33 years in the United States are warranted by current circumstances there. *See Travel Warning—Colombia*, U.S. Department of State, February 21, 2012, and *2010 Human Rights Reports: Colombia*, U.S. Department of State, April 8, 2011.

In addition to security concerns, the applicant's husband claims to have few ties to Colombia, from which he emigrated in 1979 at the age of 19, although the record suggests that his mother may be living there (as of 2009, she was 71 years old). The applicant claims to have lost her father to cancer, followed four years later by her brother being murdered at home in drug-related violence. Besides the qualifying relative's five year-old son with the applicant and the applicant herself, the record reflects that his father (age 77 in 2009, whom he claimed as a dependent on his tax return) is also a member of his household; there is also evidence that he had two U.S.-born children with his

second wife, and that the applicant is his third wife.<sup>1</sup> Due to her husband's age and lack of country connections, the applicant and her husband contend that his job prospects will be poor. She also expresses worry about medical care for her husband, whom the evidence shows has exhibited several immune responses associated with leukemia. Medical records indicate that, after he began undergoing tests in 2007 to determine why he was feeling tired all the time, blood chemistry results revealed high cholesterol and a high white blood cell count; the doctor placed him on a special diet, and he undergoes testing (e.g., bone marrow biopsy) at least twice annually to monitor these problems. Country condition information confirms that, unless able to afford expensive private health care available only in major Colombian cities, the qualifying relative will only have access to treatment in public hospitals where care is far below U.S. standards.

The record reflects that the cumulative effect of the applicant's husband's health and danger concerns, more than three decade residence in the United States and minimal ties elsewhere, and loss of employment, were he to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, a qualifying relative would suffer extreme hardship were he to relocate to Colombia to continue residing with the applicant.

The applicant's husband contends he will suffer emotional, physical, and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. After two failed marriages, he states that the applicant has brought happiness and a young child into his life. As recounted by both the applicant and her husband, their relationship began in 2002 when he returned to his mother's home in Colombia during the separation from his wife that preceded their divorce; since the applicant's September 2005 arrival, they have lived happily together in the United States. Claiming to have suffered the absence of his own mother, whom he reportedly did not see again for nearly ten years after she went to the United States when he was eight years old, the applicant's husband states that he does not wish his son to endure the same sense of loss that he did as a child. The record contains a psychiatrist's statement diagnosing the applicant's husband with Adjustment Disorder—Anxiety and Depression, reporting his treatment with two prescription medications, and noting the patient's main stressor as the prospect of his son losing a mother and him losing a wife. The qualifying relative asserts that his wife's presence is also integral to his physical well-being, as she watches over his health, including preparing his special meals according to the doctor's orders, and maintains their home. The applicant has submitted sufficient evidence of the couple's situation to establish that, without her continued presence, her husband will likely experience emotional and psychological hardship that is extreme if he remains in the United States without her.

Review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this

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<sup>1</sup> The applicant's husband reports having fallen into a serious depression as his second marriage was ending in 2002 after 20 years, which led to health problems and loss of his job; to distract himself, relates the applicant, he traveled to Colombia, where his relationship with her helped lift him out of depression, and they married in 2004 when his divorce became final.

application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant’s U.S. citizen husband and child would face if the applicant were to reside in Colombia, regardless of whether they accompanied the applicant or remained in the United States; the applicant’s lack of any criminal record and admission of wrongdoing regarding her visa application; and the passage of over six and one-half years since the applicant’s misrepresentations and unlawful entry into the United States. The unfavorable factors in this matter are the applicant’s procurement of a visa and U.S. admission by fraud and her unlawful presence here.

Although the applicant’s violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors, and the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

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