

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



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DATE: **OCT 16 2012** OFFICE: PANAMA CITY, PANAMA FILE:

IN RE:

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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant, a native and citizen of Colombia, was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) for fraud or material misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Fiancé (Form I-129F) filed by her U.S. citizen fiancé. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act based on extreme hardship to her fiancé.

On March 31, 2011 the Field Office Director concluded that the hardship that the applicant's U.S. citizen fiancé would suffer did not rise to the level of extreme as required by the statute.

On appeal, the applicant states that new evidence demonstrates that her U.S. citizen fiancé will suffer extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's fiancé, statements from the applicant, medical records for the applicant's fiancé, country conditions reports on Colombia, educational and employment records for the applicant's fiancé, health insurance records for the applicant's fiancé and his daughters, car insurance documentation for the applicant's fiancé, biographical information for the applicant and her fiancé, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

The U.S. Department of State determined that the applicant presented false documentation regarding a scholarship to study English in order to procure a J-1 visa to the United States in 2000. The applicant's claim that she had a scholarship to study in the United States was material to the applicant's eligibility for a nonimmigrant visa. The applicant states that she believed that she had a legitimate scholarship offer. However, she has not provided any evidence to support that statement. It is the applicant's burden of proof to illustrate her eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant is inadmissible under

section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

(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...

Pursuant to 22 C.F.R. § 41.81, the applicant is eligible to apply for a waiver of inadmissibility as the fiancé of a U.S. citizen. 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 in this case is the applicant's U.S. citizen fiancé. 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).

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 fiancé states that he is suffering emotional and physical hardship as a result of separation from the applicant. The record illustrates that the applicant’s fiancé has visited her three times in Colombia since the couple met on the Internet. The applicant’s fiancé states that he began to experience high cholesterol and depression after his divorce from his first wife in 2008, with whom he has two adult daughters. The applicant’s fiancé states that as a result of his depression following his divorce that he had thoughts of suicide and went to a physician who prescribed him anti-depressant medication. He reports that after meeting the applicant, he began to have hope and the strength to continue living. He states, however, that his depression became worse after the applicant’s visa denial. In support of these statements, the record contains a one sentence prescription stating that the applicant’s spouse has suffered from depression since 2008 and is receiving medical treatment. The doctor did not indicate that the applicant’s fiancé’s condition was complicated by the applicant’s inadmissibility or provide any additional details aside from indicating that the applicant’s fiancé is taking Lexapro. There is no indication in the record regarding the applicant’s fiancé’s cholesterol and any prescribed treatment. Absent an explanation in plain language from the treating physician of the exact nature and severity of any

condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO notes that although the applicant's fiancé's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO recognizes that the applicant's fiancé is suffering from emotional hardship as a result of the applicant's inadmissibility; there is no indication that the hardship rises to the level of extreme beyond what is normally experienced by individuals separated due to immigration violations. The applicant's fiancé did not present any evidence of financial or other hardship that he is suffering as a result of separation from the applicant. The evidence of record, when considered in the aggregate, does not indicate that the applicant's fiancée will suffer from extreme hardship as a result of separation from the applicant.

We must also consider whether the applicant's U.S. citizen fiancé would suffer extreme hardship should he relocate to Colombia or his native Brazil to reside with the applicant. The applicant's fiancé is a native of Brazil who became a citizen of the United States through naturalization in 2002. He states that the country conditions in Colombia are unsafe, and submits country conditions reports to support his statement, but he does not indicate how the human rights situation in Colombia would affect him specifically or why he could not relocate to Brazil. The applicant's fiancé also states that he was completing his master's degree and beginning his Ph.D. program and that he could not pay off his educational debt or continue his education if he were to relocate. The AAO recognizes the applicant's spouse's difficult position; however, as stated above, the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. at 885; *Matter of Ngai*, 19 I&N Dec. at 246-47; *Matter of Kim*, 15 I&N Dec. at 89-90; *Matter of Shaughnessy*, 12 I&N Dec. at 813. The applicant's fiancé submitted documentation indicating the expense of his studies at the University of Phoenix, but the documentation does not make clear the amount of student loans carried by the applicant's fiancé. The applicant's fiancé also claims that he would not be able to repay the car loan that he has on his and his daughter's cars if he were to relocate, but he does not state why he would be unable to sell those vehicles. The applicant's fiancé also states that his daughter's rely on him for medical insurance. The AAO notes, however, that the applicant's fiancé's daughters from his previous marriage are now both adults and the record does not indicate that they are unable to obtain other medical insurance. Moreover, hardship to the applicant's stepchildren is only relevant insofar as it is shown to cause hardship to the applicant's qualifying relative, her fiancé. The record also does not support the applicant's fiancé's statement that he would only be able to obtain work as a "farm hand" in Colombia. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Although the AAO notes the applicant's fiancé's difficult situation, the record does not establish that the hardships that he would face upon relocation to Colombia or Brazil rise to the level of "extreme" as contemplated by statute and case law.

The applicant's fiancé's concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 his qualifying relative 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 she 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.