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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**



H5



DATE: **SEP 10 2012** OFFICE: NEWARK, NEW JERSEY 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 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 in accordance with the instructions on 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 admission through misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182 (i), in order to reside with her husband in the United States.

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 Field Office Director*, dated August 12, 2010.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) failed to properly consider the evidentiary documentation submitted in support of the applicant's waiver application, and thereby, abused its discretion in denying the application. *See Form I-290B, Notice of Appeal*, dated September 9, 2010.

The record includes, but is not limited to: a brief from counsel; letters of support from the applicant and her spouse; identity, medical, financial, and employment documents; and documentation on conditions in Colombia. 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:

(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).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a Spanish passport that did not belong to her, and being admitted under the Visa Waiver Program from October 24, 2004 until January 23, 2005. The record supports this

finding, and the AAO concurs that this misrepresentation was material. Thereby, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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.

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 or the applicant's son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated 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 Id.* at 568; *In re 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 applicant’s spouse will suffer extreme emotional hardship in the applicant’s absence as the spouse fears that individuals in Colombia will kill the applicant and their son because those individuals are holding him responsible for the seizure and loss of \$200,000 by the U.S. government. Counsel also contends that the applicant is the sole caregiver for her son. Additionally, the spouse indicates that he needs the applicant and their son to visit him during his incarceration due to a criminal conviction as he would be able to continue only because of them, and that he feels terribly that they will suffer from his incarceration. He also discusses how he will suffer extreme financial hardship as he will likely be: on an extremely fixed budget after his incarceration; unable to provide separate households; and unable to travel back and forth. He further discusses how the applicant and their son will suffer extreme financial and medical hardship as: he is the family’s sole source of income; the applicant stays at home to care for their son and take him to his doctor appointments; the applicant and their son do not have any other family members to rely on during the spouse’s incarceration as his mother has extremely limited resources; the applicant does not have any close family members to help support her in Colombia; and his son needs proper, affordable medical care that is unavailable in Colombia. The applicant indicates that she witnessed the phone calls made to her family, threatening her, her spouse, and their child’s lives unless the money was paid back to the individuals in Colombia.

Although the applicant's spouse may experience some emotional hardship upon separation from the applicant, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any evidence of the spouse's mental health or his inability to function in the applicant's absence. And, the record shows that [REDACTED] diagnosed the applicant's son with a heart murmur, and further stated: "It is my clinical impression that [the son] has a structurally normal heart with a tiny muscular ventricular septal defect which will hopefully close with time. Accordingly, no specific treatment is suggested and no antibiotic prophylaxis is necessary. He will return for re-evaluation in one year, sooner if clinically indicated." [REDACTED] *Medical Letter*, unsigned and dated December 5, 2008. The AAO notes that the medical documentation provided is dated almost two years prior to submission of the present appeal. No additional documentation has been submitted on appeal establishing the son's current medical condition. Additionally, specific evidence has not been provided to establish the threatening phone calls made to the applicant. Accordingly, the AAO is not in the position to reach conclusions concerning the severity of the son's medical condition or the treatment needed, or that there is a credible risk of harm to the applicant and her family.

The AAO further notes that prior to his incarceration, the applicant's spouse had been the sole breadwinner and had been employed in a fulltime capacity since February 7, 2006, earning \$8.00/hour at [REDACTED] Parking. However, there is not sufficient evidence in the record that the spouse would be unable to support himself in the applicant's absence as his employment situation after his incarceration is speculative.

The AAO notes the concerns regarding the applicant's spouse's emotional and financial hardship as well as his family's financial and medical hardship, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse would suffer extreme physical hardship if he were to relocate to Colombia to be with the applicant because there is continued violence, and he, the applicant, and their son have received threats of harm, kidnapping, and death from individuals there. And, the spouse indicates that he would not have the same employment opportunities.

The AAO notes that the applicant's spouse is a national of Colombia, but the record is unclear whether he continues to maintain familial, social, and financial ties there. The AAO also notes that the record does not include documentation regarding specific labor market or employment conditions in Colombia; only general country conditions information without any specific discussion about how such conditions would impact the spouse's employment opportunities. And, although the U.S. Department of State issued a Travel Warning for Colombia because of criminal violence and terrorist activities, the record does not include specific evidence demonstrating the social or political conditions and their direct impact on the applicant's spouse. *See Travel Warning, Colombia*, issued February 21, 2012.

Although the applicant's spouse may experience some hardship as a result of relocation to Colombia to be with the applicant, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would 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 her U.S. citizen 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.