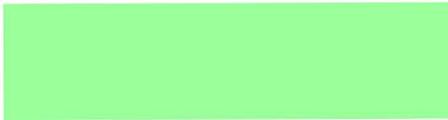


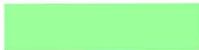


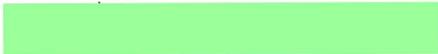
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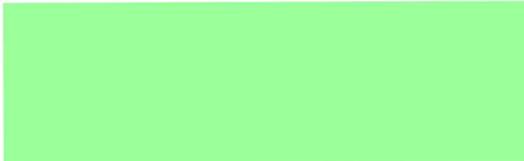
Office: NEWARK, NJ

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 request 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,

  
for

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**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 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant disputes this finding of inadmissibility. In the alternative, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated December 6, 2011.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he used a fraudulent I-551 stamp based on poor advice he had received and did not intentionally commit fraud. Counsel also contends that the Field Office Director failed to consider in the aggregate the hardship that the qualifying spouse will suffer if the waiver application is denied. *Counsel's Brief*.

The record includes, but is not limited to, statements from the qualifying spouse and the applicant and financial records. 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) 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) of the Act provides:

- (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.

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In the present case, the record reflects that on June 4, 1994, the applicant attempted to enter the United States by presenting his passport containing a fraudulent I-551 stamp. The applicant claims he was unaware that the stamp was fraudulent at the time of his entry but later learned that the stamp was fraudulent.

The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Although counsel claims that the applicant received the I-551 stamp from an unscrupulous immigration service provider and did not realize that the stamp was fraudulent, the record contains no evidence to support this assertion. Intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Instead, the statement must simply have been made willfully and with knowledge of its falsity. *Id.*; *see also Matter of G-G-*, 7 I&N at 164. Here, the evidence on the record is insufficient to establish that the applicant did not know the I-551 stamp was fraudulent or that his misrepresentation was merely accidental.

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 his children can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 AAO finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship upon separation from him if his waiver application is denied. The qualifying spouse asserts that she and her son would be devastated if the applicant were removed. She states that she and her son depend on the applicant and that she cannot imagine being separated from him. While the AAO recognizes that the qualifying spouse would miss the applicant if he were removed and may experience emotional or financial difficulties in his absence, there is no evidence that those difficulties would be more severe than those which normally result from the removal of a close family member. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). Although counsel claims that the qualifying spouse would suffer extreme financial hardship in the applicant’s absence because she would be responsible for

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caring for her step-son<sup>1</sup> and sending him to college, there is no evidence to support that claim in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, economic disadvantage is a common result of inadmissibility or removal and typically does not reach the level of extreme hardship necessary for a waiver. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Additionally, the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship upon relocation to Colombia. The qualifying spouse does not claim that she would be unable to relocate and the record demonstrates that she is originally from Colombia. Although counsel claims that the applicant's teenage son would suffer extreme hardship upon relocation because it would be difficult for him to adjust to life in Colombia due to his age, the applicant's son is not a qualifying relative for purposes of a waiver under section 212(i) of the Act. There is no evidence that difficulties the applicant's son may experience in relocating would cause extreme hardship for the qualifying spouse.

The qualifying spouse's concerns involve financial and emotional difficulties which are common results of the inadmissibility or removal of a spouse. Even when considered in the aggregate, the difficulties the qualifying spouse may experience do not reach the level of extreme hardship. Therefore, the applicant has not met the requirements for a waiver of inadmissibility 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 an 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.

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<sup>1</sup> Counsel also claims that the qualifying spouse would suffer unique hardship in caring for the applicant's son, [REDACTED] because she is not Guillermo's biological mother. Counsel states that Guillermo was born to the applicant and his former wife, [REDACTED], on September 25, 1995. *Counsel's Brief*. However, Guillermo's birth certificate indicates that the qualifying spouse is his biological mother. The qualifying spouse also notes in her statement that she is Guillermo's mother. Therefore, the evidence does not support the claim that the qualifying spouse would suffer unique or increased hardship due to her relationship with the applicant's son.