



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 27 2013** Office: NEWARK, NJ

FILE: [Redacted]

IN RE: [Redacted]

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:
[Redacted]

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,

Ron Rosenberg
Acting 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 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U. S. citizen and the beneficiary of an approved Petition for Alien Relative. 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 spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated April 13, 2012.

On appeal, counsel contests the applicant's inadmissibility and asserts that the director failed to explain how the applicant committed fraud. Counsel further states that the applicant is unable to address fraud allegations, because the director failed to specify what fraudulent documents were submitted by the applicant to obtain his nonimmigrant visa. *See Counsel's Brief attached to Form I-290B, Notice of Appeal or Motion*, dated April 24, 2012.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant and his spouse; medical evidence for the applicant and his spouse; identification and relationship documents; and family photographs. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record indicates that the applicant submitted fraudulent documents related to his marriage, children, employment, and bank statements in support of his nonimmigrant visa application in 2005. The applicant was issued a nonimmigrant visa and he entered the United States on January 22, 2006. The applicant states that a travel agent assisted him in filling out his visa application, which is the "normal way" to apply for a visa in Colombia, and he submitted the visa packet the travel agent gave him. He states that he did not understand everything on the forms, though he signed the application. He states that any incorrect information on the form was "unintentional . . . and submitted without [his] knowledge"; therefore he is not inadmissible. The record reflects that the nonimmigrant visa application the applicant submitted was in Spanish, his native language.

On appeal, his counsel asserts that the director failed to specify the fraudulent documents that the applicant submitted; therefore the applicant is unable to “defend himself against the allegation.” Counsel further asserts that nothing in the denial describes how the applicant “committed fraud.”

The AAO notes that in his waiver decision, the director specifically states that the applicant is inadmissible because he submitted fraudulent documents to obtain his nonimmigrant visa. Although the director does not identify the fraudulent documents, we find the director’s decision sufficiently informs the applicant of the basis of his inadmissibility. Furthermore, counsel provides no legal authority to support his assertions.

We also note that the applicant’s assertion of his lack of intent to commit fraud is insufficient to overcome his burden of proof. The BIA has held that the term “fraud” in the Act “is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to” the advantage of the deceiver. *Id.* However, 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, 290 (BIA 1975). Furthermore, with respect to his lack of knowledge of the fraudulent documents, the applicant submitted no corroborating evidence to support assertions either that the submitted documents were not fraudulent or that the applicant did not know the documents were fraudulent. The assertions of the applicant are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient to meet his burden of proof. *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 generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

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. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through fraud or misrepresentation.

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.

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. 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). In the instant case, the applicant's spouse is the qualifying relative.

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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

In her June 2010 statement, the applicant's spouse states that she would experience extreme hardship if the applicant were removed. She states that she earns \$20,000 and the applicant earns \$30,000 annually. She states that without the applicant's financial contribution, she would not be able to afford their monthly mortgage of \$1853. She also states that before meeting the applicant, she was depressed and felt alone, but now she feels better because she is with the applicant.

The applicant's spouse further states that she has "curvature of the spine"; she cannot carry heavy things and it is difficult for her to walk or bend. She states that the applicant assists her at home and it would be impossible for her "to manage alone." A June 2010 letter from [REDACTED] indicates that the applicant's spouse is under his care for "back and neck pain" and that she receives treatment three times a week. On appeal, counsel also submits a brief letter from [REDACTED] indicating that his office treats the applicant's spouse for osteoporosis.

With respect to relocating to Colombia, the applicant's spouse, a native of Colombia, states that she has been in the United States for 23 years and does not want to go back to Colombia because she has nothing there now.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse should she remain in the United States. The applicant has failed to submit evidence corroborating his spouse's financial hardship claims, such as information detailing their total household expenses. We also note that the latest income information in the record is from 2008 and the record contains no information demonstrating their recent income. Absent supporting

documentation, the applicant's spouse's assertion is insufficient proof of hardship. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Soffici*, 22 I&N Dec. at 165.

The AAO acknowledges that the applicant and his spouse have a loving relationship and that she would experience emotional hardship if they were separated; however, we note such hardship is a common result of deportation or exclusion and is insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Moreover, the AAO finds the letters concerning the applicant's medical condition vague, because they do not describe the severity of her condition or specify the treatment she requires. The applicant also failed to submit evidence corroborating his spouse's claims that her physical limitations negatively affect her daily activities. The AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should she separate from the applicant, would not rise to the level of extreme.

The AAO finds that the applicant also has failed to demonstrate that his spouse would experience extreme hardship if she relocates to Colombia. The AAO notes the applicant's spouse is from Colombia. Though his spouse claims she does not want to return, without assertions from the applicant or his spouse and supporting evidence concerning her hardship, the AAO cannot conclude that his spouse would experience extreme hardship if she relocates to Colombia. The AAO concludes, considering the limited evidence in the aggregate, the hardship the applicant's spouse would experience, should she relocate, would not rise to the level of extreme.

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. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he 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.