



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: JAN 07 2013 Office: LAS VEGAS, NV

FILE: [REDACTED]

IN RE: Applicant: [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

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**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada. The matter 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 beneficiary of an approved Petition of Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his legal permanent resident spouse and U.S. citizen children.

The record shows that the applicant was convicted of possession of less than 30 grams of marijuana in Justice Court in Las Vegas Township in 2002. The Field Office Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) or a violation of a law relating to a controlled substance under section 212(a)(2)(A)(i)(II) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director, dated December 13, 2011.*

On appeal, the applicant's attorney asserts that the negative factors that the Field Office Director relied on in denying the applicant's waiver are outweighed by the applicant's positive equities, and the positive equities meet the threshold required to find his spouse would experience extreme hardship if the waiver were denied.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs and letters from the applicant's attorney; letters from the qualifying spouse, applicant, their children, their friends and the applicant's employer; relationship and identification documents for the qualifying spouse, applicant and their children; a psychological report regarding the qualifying spouse; a copy of her prescriptions; letters from their son's therapist and documentation regarding his treatment plan; a copy of a 2010 U.S. Department of State Travel Warning for Colombia; financial and educational documentation for their oldest daughter, the petitioner of the applicant's Form I-130; an approved Form I-130; an Application to Register Permanent Residence or Adjust Status (Form I-485); and documentation submitted with the applicant's motions and applications while in removal proceedings. 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, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security, "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. The applicant's wife 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 AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of her separation from him. The qualifying spouse, in her letter, states that she and their family would experience heartbreak and agony if she were to be separated from the applicant. The record also contains a psychological report with an account of the qualifying spouse's statements regarding her depression, sleeplessness, appetite patterns and feelings of despair, hopelessness and helplessness. The licensed clinical social worker states that the qualifying spouse is experiencing extreme and severe hardship and recommends that she seek therapy. However, the evaluation lacks detail regarding the specific emotional and psychological hardships that the qualifying spouse is experiencing or could experience upon separation. Though the record contains a copy of the qualifying spouse's prescription for medications taken for anxiety and depression, the evidence provided fails to specifically address how the qualifying spouse's emotional and psychological hardships rise beyond the ordinary hardships associated with separation.

The applicant's attorney indicates that the qualifying spouse would suffer financial hardship upon separation, and he states that affidavits from the applicant, qualifying spouse, family and friends demonstrate that the qualifying spouse supports them. Assertions through affidavits are evidence and will be considered. However, 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)). While the record contains an undated letter from the applicant's employer indicating that he has been employed since March 14, 2011, the psychological report indicates that, at the time of the report, he and the qualifying spouse were unemployed. The record does not contain documentation, such as tax returns or earnings statements, confirming the applicant's or his qualifying spouse's income. The extent to which the applicant financially contributes to his family and the qualifying spouse's reliance upon his financial support is unclear. As such, the applicant failed to provide sufficient documentation regarding the qualifying spouse's emotional, psychological and financial hardships that she will experience as a result of her separation from the applicant.

The record also provides letters and documents describing the hardships that the applicant and qualifying spouse's children would face, whether separated from the applicant or as a result of the qualifying spouse's relocation to Colombia. Their adult daughters rely upon their parents for child care and a home, and their youngest son has learning and behavioral difficulties. However, the record does not provide detail regarding how their children's hardships will affect the qualifying spouse. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to their children will not be separately considered, except as it may affect his spouse.

The AAO also finds that the applicant has not met his burden of showing that the qualifying spouse, a native of Colombia, would suffer extreme hardship if she relocated to Colombia to live with the applicant. The applicant's spouse indicates that she has been in the United States for 14 years. She has spent most of her life in Colombia. The applicant's attorney also indicates that the qualifying spouse has family ties to the United States, including her U.S. citizen children and grandchildren. However, the record does not describe the extent of the qualifying spouse's family ties in Colombia. The applicant's attorney also indicates that there are safety issues, medical care deficiencies and financial concerns regarding relocation to Colombia. The record contains a 2010 U.S. State Department travel warning for Colombia. However, the qualifying spouse lived in Colombia for most of her life and does not describe problems living there or any concerns about the country conditions in Colombia. Even were the AAO to take notice of general conditions in Colombia, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by adverse conditions there. The current record does not establish that the qualifying spouse would experience extreme hardship as a result of her relocation to Colombia.

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 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.

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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.