



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 25 2013

OFFICE: PANAMA CITY

FILE: [REDACTED]

IN RE: [REDACTED]

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:

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 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, 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 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), due to her attempted procurement of admission to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. citizen spouse.

In a decision dated February 13, 2012, the Field Office Director concluded that the applicant did not demonstrate that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant states that her spouse will suffer from extreme hardship as a result of her inadmissibility. The applicant does not contest her inadmissibility.

In support of the waiver application, the record includes, but is not limited to letters from the applicant and her spouse, a letter from the applicant's son, letters concerning the applicant's spouse's physical condition, a report on type 2 diabetes in Latin America, biographical information for the applicant, her spouse, and their children, and documentation concerning 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)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which provides, in pertinent part, that:

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 illustrates that the applicant presented herself for admission to the United States on December 30, 1990 using a Colombian passport and U.S. visa belonging to another individual. As a result, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and ordered excluded from the United States on February 20, 1992. As a result of the applicant's use of a fraudulent passport, she was also convicted under 18 U.S.C. § 1543, Forgery or False Use of Passport, on April 19, 1991 in the U.S. District Court for the District of Puerto Rico. The applicant was sentenced to one year probation and required to pay a fine. The

applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, a permanent grounds of inadmissibility.

Section 212(i) of the Act provides 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.

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 U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant or her children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse. 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 deportation, 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, 885 (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 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.

On appeal, the applicant states that the hardships that her spouse faces, particularly as a result of his medical condition, establish that he would suffer extreme hardship as a result of her inadmissibility. The applicant states that her U.S. citizen husband suffers from diabetes mellitus, that his condition is getting worse, and that he requires her assistance in the United States. In support of that statement, the record contains two letters from medical professionals. The first letter, dated November 11, 2010, from [REDACTED] in Brooklyn, NY, states that the applicant’s spouse suffers from diabetes mellitus, hypertension, and hypercholesterolemia. [REDACTED] states that the applicant is being treated with medication for his conditions and that “he needs somebody to care for him,” “to remind him with his medications” and “accompany him for follow-up visits.” The record also contains a letter from [REDACTED] which states that the applicant’s spouse suffers from uncontrolled diabetes, high blood pressure, hypercholesterolemia, and major depression. [REDACTED] also states that the applicant’s spouse is under increased stress as he is the sole provider for his three children. The AAO notes that there is only documentation of two adult children in the record. She also states that without support from the applicant that the applicant’s spouse could “succumb” to his

illnesses. In particular, she states that the applicant could assist her spouse with meals and remind him to take his medications. She states that the applicant's spouse also "voiced extreme depression secondary to lack of support." She goes on to conclude that if the applicant's spouse does not receive the applicant's support, he "will have a heart attack, stroke, or even worse commit suicide!" Although the AAO respects the opinions of medical professionals, it is noted that no other documentation was submitted in regards to the applicant's spouse's mental, medical, or financial condition. The AAO also notes that the applicant's spouse is 52-years-old and according to his Form G-325A works full-time. There is no indication why he is unable to cook healthy food for himself, remember to take his medications, or transport himself to medical appointments. No explanation on those issues was provided by the Physician's Assistant in her letter. As stated above, there is also no documentation in the record illustrating that the applicant's spouse is responsible for three children. The record indicates that the applicant and his spouse have two adult children, ages 18 and 20, however there is no record of a third child or where the children reside. The AAO also notes that the applicant's spouse, a native of Colombia but a naturalized U.S. citizen, previously indicated that he had relatives in the United States. No indication is given as to why the applicant's adult children or his other relatives in the United States are unable to assist him with his medical needs. The AAO also notes that little weight can be afforded to the applicant's or her spouse's assertions 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)). No additional evidence was submitted in regards to the hardship that the applicant's spouse would suffer as a result from separation from the applicant. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, particularly as result of their long-term marriage, the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme."

In regards to the hardship that the applicant's spouse would suffer were he to relocate to Colombia to reside with applicant, the applicant's spouse states that he would be unable to afford treatment for his medical condition in Colombia. In support of that statement, the applicant submitted a 2010 report concerning treatment of type 2 diabetes in Latin America. The report states that diabetes is a leading health problem in Latin America. The report submitted is generalized in nature and does not indicate that the applicant's spouse would be unable to obtain employment or treatment for his condition in Colombia. No documentation was provided of the applicant's spouse's financial situation. The AAO notes that the record indicates that the applicant's spouse is a native of Colombia and resided there for many years, yet no information was provided concerning the applicant's spouse's former employment in that country or the treatment that he received there for his medical conditions. Additionally, the applicant's spouse states that he departed Colombia for the United States as a result of the violence in Colombia, although no documentation was provided to support the assertion that the applicant's spouse faced danger in Colombia. There are also no police reports or country conditions evidence in the record. As

stated above, 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 at 165. Additionally, there is no evidence of the applicant's spouse's family ties in the United States, aside from two of his children's U.S. birth certificates from 18 and 20 years earlier. The evidence, when considered in the aggregate, does not establish that the applicant's spouse would suffer extreme hardship were he to relocate to Colombia to reside with the applicant.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, 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.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.