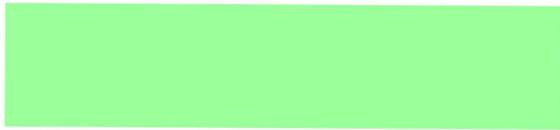




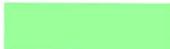
**U.S. Citizenship
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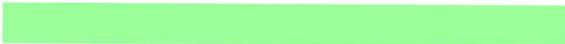
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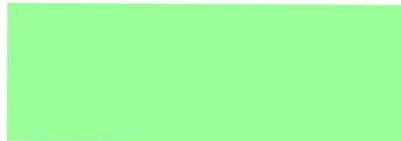
Office: NEW YORK

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,




Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the waiver application, and it 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 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 seeking to procure U.S. admission by fraud or willful misrepresentation. The applicant contests this finding of inadmissibility, but alternatively seeks a waiver of inadmissibility in order to remain in the United States and reside with her U.S. citizen spouse. She is the beneficiary of an approved spousal Petition for Alien Relative (Form I-130).

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, September 22, 2011.

On appeal, counsel contends that the applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Counsel alternatively argues the applicant has established that her inadmissibility would result in extreme hardship to her U.S. citizen husband.

The record includes, but is not limited to, counsel's brief; hardship statements; financial documentation, including W-2s and tax returns, utility bills, bank and credit card statements; copies of passports and birth and naturalization certificates; country condition information; and documents pertaining to the applicant's asylum application. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

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 [...].

The district director found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission by presenting a Colombian passport and B1/B2 visa in the name of another person on September 9, 2000. She was paroled into the country to pursue an asylum claim, which was ultimately denied on the government's appeal after having been granted by an immigration judge on February 10, 2003. The applicant was ordered removed in a decision that became final on October 17, 2008. She married the petitioner on February 13, 2009.

Counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i), because the manner of her entry to the United States reflects that she came here seeking asylum and states that USCIS is inclined to excuse the use of fraudulent travel documents in such cases. Counsel relies on *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987), to support the assertion that the circumstances underlying the asylum request require a favorable exercise of discretion. *Matter of Pula* does not concern a determination of inadmissibility for seeking to procure entry to the United States through fraud or misrepresentation, but rather whether the applicant's manner of entry is a proper and relevant discretionary factor to consider in adjudicating an asylum application. In the present case, the applicant presented a photo-substituted passport and visa to the initial immigration inspector in order to gain entry to the United States and did not disclose her true identity until immigration authorities had detected the fraud. The applicant attempted to procure admission by presenting a fraudulent passport and visa before disclosing her true identity and requesting asylum, and she is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) 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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship 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 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.

Regarding hardship from relocation, the applicant contends that moving to Colombia would impose extreme hardship on her husband, but is unable to substantiate this claim. There is no indication that the qualifying relative is unable to speak Spanish or would encounter any specific obstacles in moving back to the country of his birth. The record reflects that he became a lawful permanent resident at the age of 37, after spending over two-thirds of his life in Colombia, but is silent about his reasons for immigrating. While the applicant’s husband claims to have a brother, sister, and other relatives in the United States, the record fails to show where they live or the nature of their relationship with him. In addition to any relatives he may have remaining in Colombia, the record reflects that he will have a number of relatives there by marriage including the applicant’s parents and other immediate family members. The record fails to show that he has explored job prospects there and contains no indication he would be unable to work. Nor does the applicant offer evidence that she would be unable to find work to help support the family.

The applicant contends that her husband would experience in Colombia fewer freedoms than he enjoys here as a U.S. citizen, and offers excerpts from the 2010 human rights report to substantiate this claim. The U.S. State Department notes that “[s]ecurity in Colombia has improved significantly in recent years, [...] but violence linked to narco-trafficking continues to affect some rural areas and parts of large cities.” *Colombia—Country Specific Information*, Department of State (DOS), March

28, 2013. While sensitive to the applicant's concern, the AAO notes no evidence that the qualifying relative would be moving to a problem area or be subject to any particular threat. The updated travel advisory for the country adds that there are no reports of U.S. citizens being targeted and notes that, although kidnapping is still a problem, it has diminished significantly from its peak in 2000. See *Travel Warning—Colombia*, DOS, April 11, 2013. While the most recent human rights report confirms some of these problems, it does not establish any specific threat against U.S. citizens or interests. The AAO notes that the applicant departed Colombia in 2000 due to safety concerns, which are addressed in her asylum application. However, absent any evidence of a continuing threat against her or any of her immediate family members living in Colombia, the AAO is unable to conclude that the applicant's husband would experience personal risk by moving back to his homeland.

The applicant has provided insufficient evidence for us to find the hardship her husband would face by moving back to Colombia would amount to hardship that is beyond the common or typical result of removal or inadmissibility of a loved one. She has therefore not met her burden of establishing that a qualifying relative would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Regarding separation, the applicant's husband indicates that his life is complete with his wife and stepdaughter, states that she is a loving wife, and notes that they have much to lose if she is unable to remain. The record, however, contains no claim that he would suffer extreme emotional hardship if she left or make any showing regarding the impact her departure would have. Although the AAO recognizes the qualifying relative may experience hardship due to separation from his wife, the record contains no documentation permitting us to conclude that the hardship would go beyond the common and typical result of inadmissibility. Nor is there any indication that he would be unable to ease the pain of separation by visiting her overseas in the country where both were born.

Regarding financial hardship, the applicant makes no showing that her departure will cause economic problems for her husband. There is no documentation she has ever earned a wage here or contributed income to the household, although immigration records show she had a work permit and indicated on forms the occupation of "housekeeper." While the record contains tax returns and W-2s reflecting the qualifying relative's annual earnings, as well as showing living expenses such as rent and household costs, there is insufficient evidence to establish that his wife's absence will impose an economic burden on him.

The record does not show that the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to his wife's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. The AAO thus concludes that, based on the record evidence, were the applicant's husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship that rises to the level of extreme.

The documentation on record, when considered in its totality, reflects that the applicant has not established that her husband would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result

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of removal or inadmissibility and the AAO therefore finds that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act.

In proceedings 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.