U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: MAR 0 9 2013 Office: HIALEAH, FL FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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, Hialeah, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant contends she did not make any misrepresentation to anyone. In addition, the applicant's husband contends he cannot relocate to Colombia because, among other reasons, he has a U.S. citizen son from a previous relationship who has no intentions of moving to Colombia.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on June 25, 2007; three certifications from the applicant; three certifications from letters from the applicant's relatives; a letter from a therapist; copies of tax returns and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> In general.—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) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant first applied for a visa with her ex-husband, [redacted] A copy of the visa application contained in the record indicates it was signed by the applicant on November 25, 1998, and stamped received by the U.S. Embassy in Bogota on January 25, 1999. This visa application was denied. The applicant applied for a visa again in 2005 with [redacted] In box 17 of the visa application, which asks for marital status, the application indicates she is married. In box 18 of the application, which asks for the complete name and nationality of your spouse, the name [redacted] Colombian, is indicated. In box 20, which asks for the name of your employer, the application states [redacted] and indicates an address in Bogota. In box 21, which asks for job title, the application indicates sales manager. In box 38, the application indicates that the applicant has never been denied a visa.

The field office director found that the applicant made three misrepresentations. First, the field office director found that the applicant misrepresented the fact that she had never previously been denied a visa. Second, the field office director found the applicant misrepresented her marital status as she had not been married to [redacted] Third, the field office director found the applicant stated she was a sales manager for [redacted] when, in fact, she was self-employed as a manicurist.

The applicant explains that [redacted] was her boyfriend at the time she signed her visa application. According to the applicant, [redacted] completed the visa application for her and she signed it without reviewing it because she trusted her boyfriend to complete everything correctly. She states she had never told her boyfriend she had previously applied for a visa in 1999 and that she did work for [redacted] while also working for herself as a manicurist. She contends that she never made any misrepresentations to anyone and was never asked by an immigration officer about her marital status or her employment.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The applicant has not submitted any competent, objective evidence to support her contentions. For example, the applicant has not submitted any documentation substantiating her claim that she worked at [redacted] The applicant's explanation that she simply signed her application without reading it is insufficient to meet her burden of proving she is admissible to the United States. Therefore, the AAO finds that the applicant has not shown through independent, competent, and objective evidence that she is

admissible to the United States. Consequently, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, states that when he met his wife, he was just coming out of a very difficult marriage and was undergoing a battle trying to see his son. He states he was very lonely and depressed, and that he was only able to see his son four days a month. contends that when he met his wife, she gave him hope. According to ever since his wife's immigration situation started, he has been depressed and is in counseling. He states he and his wife want to start a family, but have decided to wait until her immigration status is corrected. states that if his wife is forced to leave the United States, she would take her daughter, step-daughter, with her. He states that his step-daughter is like his own daughter and contends he does not want to lose another loved one. Furthermore, contends he cannot relocate to Colombia, where he was born, to be with his wife because his son has no intentions of ever moving to Colombia. states he would be unable to be with his son as often as he would like and that his son depends on him for emotional and financial support. further contends that Colombia is unsafe and that there are kidnappings that occur every day. He states he wants his children to have the opportunities that the United States offers.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, will suffer extreme hardship if his wife's waiver application were denied. If decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding his depression, the record contains a letter from a therapist confirming that has received psychotherapy services. The letter describes self-reported symptoms, including: feelings of helplessness and hopelessness, increased appetite and sleep, lack of energy and motivation, and reduced enjoyment in activities. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that hardship, or the symptoms he has been experiencing, are extreme, atypical, or unique compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). In sum, the record does not show that the hardship may experience would cause hardship that would be extreme, atypical, or unique compared to others separated from their spouse. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's husband will experience amounts to extreme hardship.

Furthermore, the record does not show that would suffer extreme hardship if he returned to Colombia to be with his wife. The record shows that was born in Colombia and that his son was born in Colombia. According to his Biographic Information form (Form G-325A) in the record, both of his parents continue to reside in Colombia. Therefore, continues to have significant family ties to Colombia and there is no evidence that his readjustment to living in Colombia would be any more difficult than would normally be expected. To the extent contends he would be unable to see his son as often as he likes if he moves to Colombia, the AAO notes that son is currently nineteen years old. There is no letter from his son in the record and no indication and his son would be unable or unwilling to visit each other. There is also no documentation addressing to what extent financially supports his son. In addition, the record shows that works as a driver. There is no evidence in the record showing he cannot obtain comparable employment in Colombia. Regarding unsafe conditions in Colombia, although the AAO recognizes the U.S. Department of State has issued a Travel Warning for Colombia, *U.S. Department of State, Travel Warning, Colombia*, dated October 3, 2012, the Travel Warning alone is insufficient to show extreme hardship. In sum, there is insufficient evidence in the record to show that readjustment to living in Colombia would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.