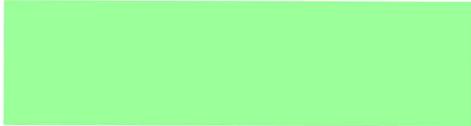




U.S. Citizenship
and Immigration
Services

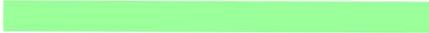
(b)(6)



Date: **MAR 26 2013**

Office: PANAMA CITY

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:

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,

f.o.r

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The record indicates that the applicant applied for an immigrant visa to the United States at the U.S. Consulate in Bogota, Colombia, and the visa was refused on June 30, 2011 as the applicant made a material misrepresentation when he concealed an independent ground of ineligibility, failing to disclose that he used marijuana. The applicant does not contest the finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. Citizen parents.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 17, 2011.

The record contains the following documentation: a statement by the applicant's father included on the Form I-290B, Notice of Appeal or Motion; a letter from the applicant's father; medical documentation for the applicant's father; and financial documentation. 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 that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 U.S. citizen father and lawful permanent resident mother are the only qualifying relatives in this case.¹ 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-Moralez*, 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.*

¹ The record indicates that the applicant's mother is a lawful permanent resident alien residing in the United States. However, the applicant did not submit any statements or evidence that his mother would experience extreme hardship if the applicant's wavier application is denied.

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. 1993), (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 applicant's father states that he will suffer medical hardship if the applicant's waiver application is not approved. Evidence in the record indicates that the applicant's father has paroxysmal atrial fibrillation. The applicant's father further states that he is suffering stress due to not being able to have the applicant in the United States with him. A letter from a doctor states that the applicant's father has increased anxiety due to the situation of the applicant who resides in Colombia, and that the increased anxiety is not good for the general health of the applicant's father, and may also complicate his high blood pressure and his atrial fibrillation.

While the applicant's father indicates that he is suffering from emotional stress due to the applicant's absence from the United States, there is no evidence in the record providing further details about any psychological condition of the applicant's father, and any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's father is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The applicant's father also states that he is suffering from financial hardship due to his separation from the applicant. The record includes copies of W-2 forms for the applicant's father, indicating that in 2010 he earned \$7,945.62, and in 2011 he earned \$14,133.49. Further financial documentation indicates that the applicant's father has a poor credit rating, and that he sends money to the applicant in Colombia. The applicant's father states that the applicant is unable to find employment in Colombia, and thus he has to send money to the applicant to support him in Colombia.

With respect to both the medical hardships and the financial hardships faced by the applicant's father, the AAO notes that the applicant's spouse resides in the United States, and that the applicant's father has two other sons who reside in the United States. The record contains no

information or evidence regarding any support that the applicant's two brothers may provide to the applicant's father to assist with his medical and financial hardships.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen father will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's father will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's father is facing as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In regard to relocation, the AAO notes that the applicant's father was born in Colombia, and is familiar with the language and culture of Colombia. The applicant's father contends that his return to Colombia is out of the question because at his age he would not be able to find a job and would not have a pension for retirement, health care, or the possibility to buy a house. However, the applicant's father presents no evidence to support these contentions. In addition, regarding any financial hardship that the applicant's father may encounter if he returned to Colombia, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Based on the evidence on the record, the applicant has not established that his father would suffer hardship beyond the common results of inadmissibility if he were to relocate to Colombia to reside with the applicant.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.