

(b)(6)



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**

[Redacted]

DATE: NOV 14 2013 Office: NEWARK, NJ

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, and the prior AAO decision will be withdrawn. The underlying waiver application will be approved.

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 procuring a visa to the United States through fraud or the willful misrepresentation of a material fact. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved I-130 Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her family.

The Field Office Director found the applicant failed to establish that her qualifying relative would experience extreme hardship given her inadmissibility and denied the waiver application accordingly. *Decision of the Field Office Director*, dated March 5, 2009.

The AAO subsequently found that, although the applicant demonstrated her spouse would experience extreme hardship upon relocation to Colombia, extreme hardship had not been established in the event of separation. *AAO Decision*, November 2, 2011. The appeal was consequently dismissed. *Id.* The AAO affirmed this finding on motion. *See AAO Decision on Motion*, February 12, 2013.

On the applicant's second motion, counsel submits a statement from the applicant's spouse, financial and medical documents, letters from physicians and business owners, death certificates, and copies of household bills. In the statement, the applicant's spouse contends he would lose his emotional and economic support, including income from his and the applicant's restaurant business. The spouse moreover states that, given his advanced age and his family history of heart problems, he will experience medical hardship if he is separated from the applicant.

The record includes, but is not limited to, the documents listed above, additional briefs, statements from the applicant and her spouse, a letter from the spouse's physician, financial and medical documents, passport copies, documentation of immigration proceedings, photographs, other applications and petitions, and country conditions information. The entire record was reviewed and considered in rendering a decision on the motion.

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:

- (1) 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 record reflects that the applicant entered the United States as a visitor for pleasure on or about April 17, 1982 with authorization to remain in the United States until July 15, 1982. She remained in the United States beyond her period of authorized stay. The applicant was subsequently placed into deportation proceedings and on January 3, 1983 the applicant was granted voluntary departure with an alternate order of deportation. She was initially required to depart the United States on or before April 3, 1983, she requested an extension of time to depart which was denied, and she was subsequently ordered to depart on or before May 6, 1983. She departed the United States on or around November 30, 1991 and therefore departed subject to a deportation order. The applicant misrepresented on her December 17, 1991 immigrant visa application that she had not been deported from the United States within the last five years. She was admitted to the United States on January 27, 1992 as an immigrant.

The applicant's spouse contends the applicant made a "good faith mistake" and not a "willful or on purpose misrepresentation." This contention is not supported by the record. The record contains ample documentation indicating the applicant was aware she was placed in removal proceedings, and that she was informed that she had a grant of voluntary departure with an alternate order of removal. Furthermore, the record reflects that the applicant even requested an extension of time to depart the United States. As such, the AAO cannot conclude, as her spouse suggests, that her failure to report that she was previously deported was the result of a good faith mistake. The applicant's record indicates that the applicant knew she had been placed in immigration proceedings, ordered deported, and failed to inform consular officials when she applied for and obtained an immigrant visa. The AAO therefore affirms that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 v. I.N.S.*, 138 F.3d 1292 (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 motion, the applicant's spouse claims that if the applicant had to return to Colombia without him he would lose his companion, his friend, his economic support, his right hand, his nurse, and his wife. He explains that he is over 70 years old, and that he may not be able to control his hypertension, hyperlipidemia, and diabetes without her present. A physician indicates in a letter that the spouse has a strong family history of deaths related to heart attacks and kidney failure due to hypertension. The physician adds that the applicant "has been very helpful with watching [her spouse's] diet and checking his sugar intake daily by monitoring it at home. Deporting her would be very detrimental to his health. Under these circumstances and his advanced age, it is imperative for him to have the care of [the applicant.]" *Letter from Dr. Eduardo Miguel, March 8, 2013.* The applicant's spouse further explains that he has a long history of cardiac problems in his family, as his parents and three brothers died of heart attacks, strokes, and kidney failure. Death certificates are submitted in support. The spouse moreover contends he was assaulted and robbed in June 2012, and due to injuries sustained, he was confined to bed for a week after a trip to the emergency room. He states that he would not have been able to survive without his spouse's assistance.

The spouse adds that he would experience economic hardship without the applicant present. He explains that aside from the money he and the applicant earn from their restaurant business, he only receives \$1070.00 a month in social security. A 2012 statement from the Social Security Administration (SSA) is submitted in support. He indicates that without the applicant, he cannot maintain the business, and he will consequently be unable to pay the \$3,000 in monthly bills. Copies of some bills are submitted in support.

The record remains unclear on whether the applicant's financial contributions in the United States would alleviate her spouse's financial situation. The applicant has submitted evidence demonstrating that her spouse receives \$1070 a month in social security benefits. However, although the spouse claims the applicant's income from their restaurant business helps pay for his expenses, the record does not reflect that her income, as reported on their 2011 federal income tax returns, is sufficient to assist him financially. The 2011 tax returns indicate that the spouse received \$13,195 in social security benefits, that the applicant's business income was \$3,156, and that she did not have any wages subject to social security taxes. Furthermore, there is no other documentary evidence of any other income the applicant may earn. Regardless of the evidence on the amount of the applicant's income, the applicant has submitted sufficient evidence to indicate that, given her spouse's income, he would suffer financial hardship without her present.

The applicant has also submitted documentation establishing that her spouse would experience medical hardship in the event of their separation. The death certificates submitted indicate that the spouse has a family history of fatal heart conditions, and the applicant had previously demonstrated that her spouse, now 73 years old, suffers from hypertension, hyperlipidemia, and diabetes. The spouse's age and medical conditions, when viewed in light of his family history, supports contentions that the applicant's absence would negatively impact his health.

The AAO therefore finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Colombia without her spouse.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The positive factors include the extreme hardship to her spouse, ties to the community and her lack of a criminal record. The unfavorable factors include the applicant's periods of unlawful status in the United States, her failure to comply with a grant of voluntary departure in 1983, her misrepresentation, and some evidence indicating she was employed without authorization.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden.<sup>1</sup> The motion is granted, and the prior AAO decision is withdrawn.

**ORDER:** The motion is granted, and the prior AAO decision is withdrawn.

---

<sup>1</sup> The AAO notes that the applicant may still require an approved Form I-212 application based on her removal.