



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **APR 02 2014** Office: NEWARK [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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and 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 under 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 admission to the United States through fraud or misrepresentation. The record reflects that the applicant failed to indicate on a visa application that she had previously overstayed her authorized stay in the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

In a decision dated September 10, 2013, the field office director found that the applicant failed to establish that her qualifying relative spouse would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 10, 2013.

On appeal, counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the Service erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Counsel asserts that the qualifying spouse suffers deteriorating physical and mental health for which he needs the applicant to assist him with everyday activities. Counsel also contends that the applicant made a mistake in filling out a visa application form and did not intentionally misrepresent any fact. With the appeal counsel submits a brief, affidavits from the applicant and her spouse, a psychosocial evaluation from a licensed social worker, and medical documentation. The record also contains financial documentation submitted with the applicant's Application to Adjust Status (Form I-485).

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....

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility. The field office director found that the applicant had entered the United States on May 23, 1996, as a B-2 visitor and stayed beyond her authorized stay, not departing until October 28, 1999. The field office director further found that when the applicant applied for a non-immigrant visa to the United States on October 21, 2011, she indicated that she had never overstayed the amount of time granted by an immigration official or violated the terms of a U.S. visa. Based on this information the field office director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

Counsel for the applicant asserts that the applicant did not willfully misrepresent a material fact, but made a mistake when she filled out the visa application and voluntarily disclosed the error at her adjustment interview. The applicant also states that she simply made an error on the application by indicating "no" to a visa question about any previous violations. Records show that the applicant also indicated on her visa application that her 1996 visit to the United States was for 11 days, despite the fact that the applicant resided in the United States for over three years.¹ She did not correct this information at her visa interview and was issued a visa based on that information.

The AAO finds that the applicant has not submitted sufficient evidence to overcome the finding of the field office director that the applicant is inadmissible for misrepresentation. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 spouse is the only qualifying relative in this case. 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

¹ The AAO further notes that the applicant did not disclose on her visa application that she had resided unlawfully in the United States from 1991 to 1995, but only listed one visit to the United States in 1996.

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. *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.

Counsel for the applicant asserts that the applicant's spouse suffers numerous physical problems for which he depends on the applicant for daily activities, including cooking, cleaning, going to the store and work since the spouse is no longer able to work. Counsel asserts that the applicant is the sole financial provider and denial of her petition will lead to the spouse's bankruptcy, welfare, or homelessness. Counsel further contends that the applicant provides her spouse with emotional and psychological support and that the applicant has a good employment history and provides community service.

The applicant contends that her spouse suffers osteoarthritis, chronic back pain, and other injuries, including worsening conditions from a 1975 auto accident. She states that he undergoes physical therapy and had surgery on a rotator cuff. She states that her spouse has difficulty getting around by himself and needs her help.

The applicant's spouse states that his health condition has worsened with age and it is difficult to walk and care for himself. He states that he can no longer work and has retired. He also states his memory has become bad and that the applicant has prevented accidents due to his memory problems. The applicant's spouse states that his sons do not live near him and he has no contact with a brother in New Jersey. He also states that he would have difficulty living in Colombia with the applicant as he has only lived in Puerto Rico and the United States, and fears he would be unable to receive medical treatment.

A psychosocial evaluation states that the applicant's spouse suffers stress and anxiety about the applicant's situation and that the applicant's spouse reported the applicant is a blessing to him and has reignited his religious faith. The evaluation states that the spouse supports the applicant on a limited income, and that the spouse reports that he and the applicant are best friends with the applicant assisting with his memory and health problems, cooking, and caring for his medical needs. It states that the spouse's current level of functioning is affected by a history of accidents and injuries, and that he has dislocated discs in his back and neck, vision problems, hypertension, and high cholesterol, and that he takes daily medications. The evaluation states that the applicant's spouse has family in other states, but that he does not communicate with them.

The evaluation further states that the spouse could not live in Colombia because he would not continue to receive state medical insurance or have access to the same level of medical care as in the United States, and because the applicant could not find employment due to the economic situation in Colombia.

Medical documentation submitted contains reports from 2005, 2010, and 2011, and handwritten notes from doctors.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant submitted statements about the emotional stress her spouse would experience due to separation from the applicant, but did not establish the hardship to the spouse would rise to the level of extreme. The

applicant also submitted a psychosocial evaluation, but the report provided does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. Nor has it been established that the applicant's spouse would be unable to travel to Colombia to visit the applicant.

The applicant also submitted statements that her spouse needs her assistance due to health problems. Medical documentation shows the applicant's spouse has sought treatment and had physical therapy, but the documentation contains no explanation of the severity of the spouse's condition and thus does not establish that the spouse's condition is so severe or requires treatment such that it necessitates the applicant's presence in the United States.

Counsel indicates that the applicant provides financially for the qualifying spouse. However, no documentation has been provided establishing the applicant's gainful employment in the United States to support the assertion that her physical presence and employment is significant to the spouse's finances. The record contains Biographic Information (Form G-325) dated March 25, 2013, in which she states she is a housewife. The record also contains bank statements, a 2012 W-2, and a 2012 Social Security Benefits Statement for the spouse in support of the applicant's Application to Adjust Status (Form I-485), but no documentation has been submitted establishing the spouse's expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States the spouse will experience financial hardship.

Further, 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).

The AAO recognizes that the applicant's spouse would 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 or inadmissibility and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of 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.

The AAO also finds the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Colombia to reside with the applicant. The spouse states that he fears being unable to find adequate health care and the psychosocial evaluation states the applicant may be unable to find employment due to economic conditions in Colombia. However, the record does not contain any country condition evidence or other documentation to support this contention, and fails to address where the applicant would live if she returned to Colombia, therefore failing to establish that health and economic concerns regarding returning to Colombia would rise to the level of extreme hardship for the applicant's spouse.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or

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inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.