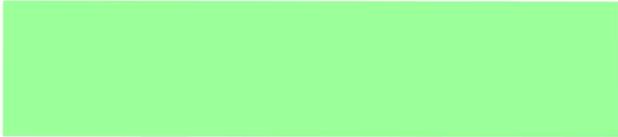


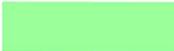
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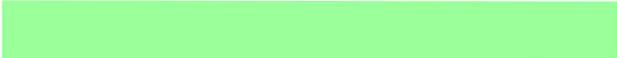


U.S. Citizenship  
and Immigration  
Services



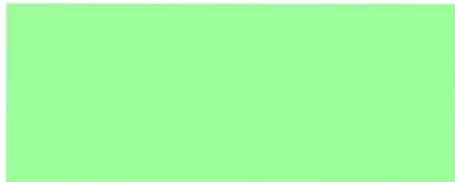
Date: **AUG 25 2014** Office: TAMPA, FLORIDA

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 (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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Tampa, Florida, 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 a 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). He is the spouse of a U.S. citizen and has one U.S. citizen child. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 14, 2014.

On appeal, counsel for the applicant asserts the director's decision was in error and that the record established the applicant's spouse will experience extreme hardship if the applicant's waiver is denied.

The record contains, but is not limited to, the following documentary submissions: a statement from counsel for the applicant; statements from the applicant and his spouse; tax returns for the applicant and the applicant's spouse; a report on human rights conditions in Colombia; copies of cashed checks written by the applicant for child support; an employment letter for the applicant; a letter from a friend of the applicant; a letter from the applicant's former spouse; a copy of a divorce decree for the applicant's prior marriage; a birth certificate for the applicant's child.

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

- (i) 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 chapter is inadmissible.

The record establishes that the applicant participated in the filing of a fabricated Form I-130 by a person claiming to be his brother. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 a

VAWA self-petitioner, 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. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. 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 the adjudicator must then determine 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.*

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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel for the applicant states that the applicant's spouse will experience financial and emotional hardship if the applicant is removed. He states that the applicant is the primary financial support for his family and that he has acquired debt and financial responsibility here in the United States. Counsel further states that the applicant's spouse would not be able to support herself and their minor children<sup>1</sup> without the applicant's income.

The applicant has submitted a statement asserting that he supports his spouse mentally, physically and financially. He also states that he provides child support for his child from a previous marriage. The applicant's spouse has submitted a letter stating that she cannot imagine living with the applicant, whom she married in 2011, and that the applicant's son would experience a severe blow to be without his father.

With regard to the assertions of financial hardship, the record contains a joint tax return for 2012 which indicates that the applicant and his spouse reported \$46,442 in income. A W-2 for the applicant's spouse for 2012 indicates that she earned \$46,442 from her employment. Tax records for 2011 and 2012 do not indicate that the applicant earned any income, and that all the income reported on their joint returns was earned by the applicant's spouse. While the record contains an employment letter from 2013 and a letter from a co-worker in 2013, these do not establish what the applicant contributes financially to the household. Based on this, counsel's assertion that the applicant is the sole income earner for the family is not supported by the record as the record does not contain any documentation that the applicant provides any financial support to his current spouse.

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<sup>1</sup> While counsel refers to "children" the record only contains information on one child, the applicant's son with his former wife. This son is apparently living with his mother. There is nothing to support the contention that the applicant's current spouse will be responsible for "minor children."

The record does contain copies of cashed checks written to the applicant's former spouse. The checks are written from a joint account between the applicant and his current spouse, so it is unclear where the income that is being used to pay the child support comes from. While this is sufficient to indicate the applicant pays child support to his former spouse, there is insufficient evidence that his current spouse would be unable to meet her financial obligations if he were removed because she would have to financially support the child. There is no other evidence submitted into the record which explains or details what expenses and financial obligations the applicant and his spouse have.

While we recognize the applicant's spouse and son may experience some emotional hardship due to separation, there is no objective evidence in the record which indicates that any such hardship would rise above the common emotional hardship experienced by the relatives of inadmissible aliens. Even when the hardship factors discussed above are examined in the aggregate, the record does not establish the applicant's spouse would experience extreme hardship due to separation.

Counsel for the applicant asserts on appeal that the applicant's family would experience psychological, financial and physical hardship if they relocated to Colombia. While the record contains a human rights report on Colombia, this report does not deal with hardships the applicant himself will experience. There is no evidence that the applicant or his family members would experience the types of human rights violations discussed in the report. Without evidence of how the applicant's spouse would be impacted, the record does not demonstrate that she would experience psychological, physical and financial hardships as counsel has asserted.

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 spouse faces extreme hardship if he is refused admission. We recognize that the applicant's wife will experience some hardship as a result of separation from her husband. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent decisions. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.