



U.S. Citizenship  
and Immigration  
Services

(b)(6)

AUG 26 2014

Date: Office: HARTFORD FIELD OFFICE 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:

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, Hartford, Connecticut, 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 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 with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 14, 2014.

On appeal counsel for the applicant contends that the field office director abused her discretion in denying the waiver application and that the applicant's spouse would suffer extreme hardship if the applicant has to return to Colombia. With the appeal counsel submits a brief. The record contains an affidavit from the applicant's spouse, a statement from the spouse's children, medical information for the spouse, financial documentation, and letters of support. 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.

The record reflects that the applicant entered the United States on December 12, 1999, using a passport and visa belonging to her sister. Neither counsel nor the applicant contests the finding of inadmissibility.

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 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.

In her brief counsel asserts that the applicant's spouse has several medical conditions for which he receives treatment and that the applicant administers his medications and helps him deal with depression. Counsel also asserts that the applicant's spouse relies on her for support.

In his affidavit the applicant's spouse states that he takes many medications for his conditions and needs the applicant to help him remember to take his medication and deal with depression. Medical records for the spouse show regular healthcare visits from 2007 through February 2012. The documentation lists the spouse's medications and identifies his medical problems as including hypertension, diabetes, metabolic syndrome, sleep apnea, obesity, and chronic back pain. The medical records contain one reference to depression in a 2008 visit and another in 2009, but other psychological references in the medical documentation indicate normal with no evidence of depression or abuse.

The record contains no clear explanation of the spouse's conditions or prognosis, or how a treatment plan requires the applicant's physical presence in the United States. The applicant's spouse state that the applicant helps with the spouse's depression, but other than two brief references in the medical documentation, the record contains no detail or supporting evidence explaining the exact nature of any emotional hardship the spouse experiences. The assertions made by the applicant's spouse regarding the spouse's emotional hardships have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel also indicates that the applicant provides financially for the spouse. The spouse states that he was laid off from his job in 2011 and now receives unemployment benefits from the state. Financial documentation submitted to the record includes taxes from 2010 and 2011, unemployment benefit information for the spouse for 2011, a lease and three utility statements from 2011, and one credit card statement from 2012. However, no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's spouse 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 spouse would face 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.

We also find that the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant due to her inadmissibility. The spouse states that he would suffer physically, emotionally, and financially if forced to live in Colombia to be with applicant. He states that he takes many medications that he could not continue in Colombia. A February 2012 letter from the spouse's doctor states that the spouse had been a patient for about four years with chronic pain syndrome, obstructive sleep apnea, diabetes II, hypercholesterolemia, and dizziness. The letter states that if the spouse travels to Colombia it will be impossible to get treatment there and it would be dangerous for him to discontinue.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence submitted to the record, however, is insufficient to establish that the applicant's spouse suffers from such a condition. The record contains copies of medical records and a brief letter from the spouse's physician, but no clear explanation of the seriousness of the spouse's conditions or supporting evidence to establish that he would be unable to obtain medical care or prescription medication in Colombia. Thus the record does not document this hardship.

The spouse also states that he would never be able to find work in Colombia, but the record contains no country information or other evidence to support this assertion. The spouse further states that his grown daughters need him in their life here and that he supports his elderly parents in Puerto Rico. A letter from the spouse's adult children describe how the applicant has been influential to them and their father, but does not establish that separation from their father would create extreme hardship to him. The record also contains no evidence that the applicant's spouse supports his parents or that he would be unable to do so from Colombia.

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 inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her spouse as required under section 212(i) of the Act. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. 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.

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*NON-PRECEDENT DECISION*

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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.