

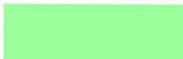
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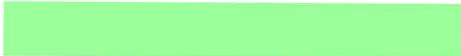


U.S. Citizenship  
and Immigration  
Services



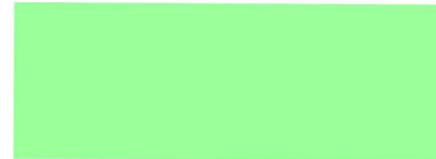
Date: **JUL 09 2014** Office: LAWRENCE FIELD OFFICE

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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Lawrence, Massachusetts, 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 November 21, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director's denial failed to consider relevant evidence, including ties to the United States and medical hardship. With the appeal counsel submits a brief. The record contains affidavits from the applicant and her spouse, medical documentation for the spouse, financial documentation, educational documents for the spouse's son, a letter from the mother of two of the spouse's children, and evidence submitted in conjunction with the Petition for Alien Relative (I-130) and 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.

The record reflects that the applicant entered the United States in 2001 using a Venezuelan passport and a visa issued in a name other than her own. In her affidavit the applicant stated that she had tried

to leave Colombia because she was afraid, but her visa application was denied. She stated that after her oldest son was killed by gangs she got a Venezuelan visa and passport to go to the United States.

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-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. *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 asserts that the applicant's spouse depends on the applicant for physical and emotional support. The spouse states that he is depressed as he is worried about his children and the applicant, and that he would be lost without her. However, the record contains no detail or supporting evidence explaining the exact nature of the spouse's emotional hardship and how such emotional hardship is outside the ordinary consequences of removal. The assertions made by counsel and the applicant's spouse regarding emotional hardships have been considered, however the evidence does not establish the severity of the hardship or the effects on his daily life.

The applicant's spouse states that he has medical issues including high blood pressure, allergies, and asthma, and that the applicant helps him keep up with medications and doctor appointments. Counsel states that the spouse's medical concerns would be intensified with the applicant's absence. Medical documentation submitted to the record includes a note from the spouse's physician stating that he has multiple medical issues, including hypertension, asthma, elbow and back pain, headaches and has had a "5 year HO chest wall tightness associated with anxiety." Medical records for the spouse show he has allergies and asthma. Records also show lab results and prescriptions. However there is no explanation of the severity, prognosis, or treatment plan for the spouse's conditions, or how they require the applicant's presence in the United States. Without more detail or explanation we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Counsel asserts that the applicant's spouse is responsible for monthly expenses that exceed his monthly income, including rent, groceries, internet, and cable, and has the added expense of medical treatment and assisting a daughter with her own child because the father is no longer involved. Counsel asserts that if the applicant remains in the United States she can continue to assist her spouse with financial obligations. However, no documentation has been submitted to the record to show what financial contribution the applicant makes to establish that without her presence her spouse would experience financial hardship. Counsel also asserts that if the applicant is in Colombia her spouse will need to maintain a second household, but it has not been established that the

applicant would be unable to support herself while in Colombia, thereby ameliorating the hardship referenced by counsel with respect to having to maintain two households.

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 there is insufficient evidence in the record to find that the applicant's spouse would suffer hardship beyond the common results of removal. The difficulties that the 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 find, however, that the record establishes the applicant's spouse would suffer extreme hardship if he were to relocate to Colombia. Counsel asserts that the applicant's spouse will be devastated if he is unable to provide support to his family as he has responsibilities for four children, his parents and siblings that he cannot abandon to relocate to Colombia. The applicant's spouse states that he has never been outside of the United States and that his work, family, and doctors are all here.

The spouse states that although his children do not live with him he sees them often and the younger ones depend on him. A letter from the mother of two of the spouse's children states that he is close to them. The spouse states that his son has AD/HD, a mood disorder, and a learning disability, and receives special attention in school. School records indicate that the son has a learning disability, particularly with word usage and sentences, and some behavior problems. The spouse states that he meets with his son's teachers and plays an important role in guiding him. Counsel asserts that the spouse goes to conferences and meetings with specialists for his son and works with the child to develop coping mechanisms for his disability.

Counsel asserts that if the applicant's spouse were forced to relocate to Colombia he would struggle to maintain expenses and support his family in the United States. Counsel asserts that since the spouse has never been to Colombia he has no personal or professional ties to facilitate finding employment. The spouse states that he is terrified of moving to Colombia as he could not find a job and many people depend on his income. He states that an older daughter has her own child and depends on him for food and bills and that he has agreed to share the costs of raising his younger children by paying for clothes, school supplies, and medical care. Financial documents submitted to the record include income statements for the spouse, joint bank statements for the applicant and spouse, a lease agreement and rental payment receipts, Comcast statements from 2012 and 2013, and receipts for money sent in 2009 and 2010 to the mother of the spouse's daughter, presumably for child support.

The record establishes that the applicant's spouse was born in the United States and has no ties to Colombia. By relocating he would have to leave his family, most notably his parents and children for whom he provides financial and emotional support. The applicant's spouse states that he fears Colombia is a dangerous country, and he believes he could not find a job there. He would therefore be concerned about his safety as well as his financial well-being and ability to financially support family in the United States. A U.S. Department of State Travel Warning dated April 14, 2014, states

“We strongly encourage you to exercise caution and remain vigilant as terrorist and criminal activities remain a threat throughout the country.” Further, country information shows the unemployment rate for Colombia in 2013 was one of Latin America's highest (<https://www.cia.gov>). The record thus establishes that the applicant’s spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 a qualifying relative 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.