

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: **JUL 14 2014**

Office: TAMPA

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. 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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Colombia, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, December 20, 2013.

The applicant does not provide any additional evidence on appeal in support of establishing that his qualifying relative will suffer extreme hardship if the waiver application is not approved. Counsel contends that the documentation previously submitted to the record is sufficient to show that the denial of waiver would result in extreme hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: a brief filed by counsel in support of the Form I-290B, Notice of Appeal or Motion; statement by the applicant and the applicant's two children; financial documentation; and letters of reference. 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.

The applicant does not contest that at the time of his 2007 application for a nonimmigrant B1/B2 visa, he declared before the U.S. consular officer that he was married, when, in fact, he had divorced his spouse in 2005. Counsel's brief states that the applicant willfully misrepresented a material fact, namely his marital status, in an effort to procure his nonimmigrant visa. However, counsel states that although the applicant and his spouse were officially divorced at the time of the visa application, they had reconciled and were living as common-law husband and wife.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

(B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The Foreign Affairs Manual, at 9 FAM 41.31 N3.4, further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

By claiming he was married in his application for a B-1/B-2 visa, the applicant represented that he had a close family tie in Colombia. By omitting the fact that he was no longer married, he cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa. As such, we concur with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation with respect to his nonimmigrant visa application in 2007.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's U.S. citizen wife is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) considers a child's hardship a factor in the determination whether a qualifying relative experiences extreme hardship. 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. See *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 contends that the financial impact to the applicant’s spouse if the waiver application is not approved and the applicant departs the United States is a factor in determining hardship to the applicant’s qualifying relative. The record includes a copy of the 2011 federal income tax return for the applicant’s spouse, which indicates that she had an adjusted gross income of \$11,709 for that tax year, which was derived as business income. The record further includes a Form I-864, Affidavit of Support Under Section 213A of the Act, filed by the applicant’s spouse, which states that she was unemployed since May 1, 2012; however, counsel’s brief states that the applicant’s spouse is currently gainfully employed. The record does not include a copy of the federal income tax return for the applicant’s spouse; however, the record does include three copies of 2012 Internal Revenue Service Form I-1099-MISC, indicated that the applicant’s spouse earned \$15,376.43 in miscellaneous income during 2012. While the record includes a letter dated October 8, 2013 stating that the applicant and his spouse passed their examinations and are officially authorized to sell life insurance for a company in the state of Florida, there is no evidence regarding the current employment of the applicant’s spouse, and the income that she derives from such employment. Other financial documentation in the record includes bank statements, a house lease agreement, and automobile insurance information. The applicant, in his letter of November 12, 2013, states that his spouse does not have the economic means to live alone, and that he supports her, paying rent, basic services, food, and clothing. However, there is no evidence in the record that the applicant derives any income as a means to support his spouse. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant’s absence.

The applicant states that his spouse would suffer extreme emotional hardship if he leaves the United States. On appeal, counsel states that the emotional and psychological impact to the applicant's spouse cannot be ignored in addressing hardship. However, the record does not include any statements from the applicant's spouse to indicate that she is experiencing any emotional or psychological hardship. Although we acknowledge the applicant's contention that his spouse will experience emotional hardship were she to remain in the United States while the applicant relocates abroad, the record does not establish the severity of this hardship or the effects on her daily life.

The applicant further states that he has two children in the United States, that his daughter is attending college and is financially dependent on him, and that while his son is living with his mother, the applicant's ex-wife, the applicant is required to pay child support for his son. As stated above, under section 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor if it affects whether a qualifying relative experiences extreme hardship. There is no evidence in the record to indicate that the applicant's children are suffering from any hardships which affect the applicant's qualifying relative.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she 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 her 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.

Regarding hardship that the applicant's spouse may experience if she were to relocate to the Colombia, counsel notes that the applicant's spouse was born in Puerto Rico and is a United States citizen. Counsel states that the applicant's spouse has two U.S. citizen children from a previous relationship and a grandchild living in the United States. However, the record does not indicate the age of the children of the applicant's spouse and to what extent, if any, they rely upon the applicant's spouse for support. Counsel further states that the mother of the applicant's spouse resides in Puerto Rico. The applicant's spouse resides in Florida, the record does not indicate whether her mother has other children to provide care and support to her in Puerto Rico and to what extent, if any, her mother relies on her for support. Although separation from family members is a factor to be considered, the record fails to establish that the applicant's spouse will experience hardship that rises to the level of extreme if she relocates to Colombia and is separated from her family members.

Counsel further contends that the applicant's spouse may be in harm's way if she were to relocate to Colombia. The record includes two documents from the Municipality of [REDACTED] Colombia, which indicate that the applicant was a victim of the conflict in Colombia and his physical integrity is in danger by armed groups, which is the reason he left the city. The letters are dated October 2004, almost ten years ago, and there is no evidence to indicate that the applicant continues to be in danger in that city, or in any other location in Colombia. Counsel refers to the U.S. Department of State travel warning for Colombia, dated April 11, 2013, which indicates that terrorist and narco-terrorists, including criminal groups, continue to threaten residents throughout the country.

However, counsel notes that the travel warning states that Colombia has experienced a significant improvement in security, and that about 60,000 Americans reside in Colombia and another 280,000 visit each year.

Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Colombia to reside with him. As there is insufficient evidence to demonstrate the emotional, financial, medical, or other hardships of relocation are beyond the hardships normally experienced, we cannot conclude that the applicant's spouse would experience extreme hardship if the waiver application is denied and she relocates to Colombia.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected difficulties arising whenever a spouse is removed from the United States. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of extreme as contemplated by statute and case law.

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.