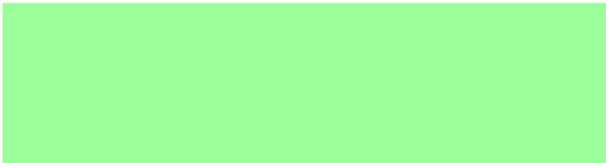


(b)(6)

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

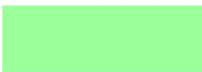


**JUN 11 2014**

DATE:

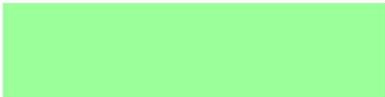
Office: OAKLAND PARK

File:



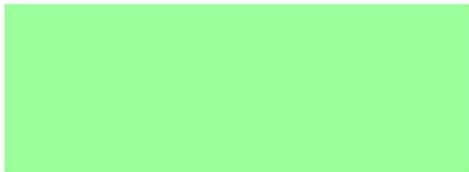
IN RE:

Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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, Oakland Park, Florida, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision dismissing the appeal will be affirmed.

The applicant is a native and a 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 or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his daughter.

The field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, December 5, 2012. On appeal, the AAO found the applicant had not shown that failure to grant a waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO*, December 18, 2013.

On motion, counsel asserts that newly-provided evidence establishes the applicant's wife would suffer extreme hardship if she relocated to Colombia. In support of the motion, the applicant's counsel provides evidence including, but not limited to, updated hardship statements, country condition information, and financial information. This evidence supplements a record containing previous immigration applications and supporting documentation. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 shows that, on June 29, 2001, the applicant attempted to enter the United States using a passport with a fraudulent U.S. lawful permanent resident stamp. As the applicant no longer contests his inadmissibility under section 212(a)(6)(C)(i) of the Act, the AAO limits review to

whether he has shown his inability to remain in the United States would impose extreme hardship on a qualifying relative.

A waiver of inadmissibility under section 212(i)(1) 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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident wife 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO found on appeal that the applicant's wife would suffer extreme hardship by being separated from her husband of more than 50 years, but that the applicant had not shown his wife would experience extreme hardship by relocating to remain with him. The applicant must therefore establish that his wife's return to her native Colombia would also impose hardship that goes beyond the usual or common results of the removal or inadmissibility of a family member.

The record reflects that the applicant's wife and the applicant arrived together in the United States together in 2001 after 40 years of marriage to join their four children, and the qualifying relative became a lawful permanent resident in 2006. The record shows that their four children, six grandchildren, and three great-grandchildren live here, and the applicant's wife claims to have no family, friends, or acquaintances remaining in Colombia. Besides condominium ownership, her other U.S. ties include a cemetery burial space and church membership. She expresses concern that moving back to Colombia would entail forfeiture of her status as a lawful permanent resident here while exposing her to violence in her home country.

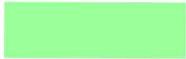
A December 2012 letter from the qualifying relative's mental health counselor indicates she was being treated for panic disorder with agoraphobia. Besides evidence that she was taking anti-anxiety medication and had been referred to a program for panic disorder sufferers, there is no further detail about the nature of her condition and prescribed treatment. The applicant's wife claims to have hypertension – there is evidence she is taking blood pressure medication -- and high cholesterol, for which no documented treatment is provided. She also offers what appear to be printouts of blood test results to support her cholesterol claims and an "ECG" strip. These laboratory results are unaccompanied by any plain language explanation from a doctor of the exact nature and severity of the claimed conditions. The AAO notes a statement from the qualifying relative's daughter regarding a lifestyle medicine program incorporating a plant-based diet to address heart disease, hypertension, and cholesterol. However, without a doctor's assessment, the AAO is not in the position to reach conclusions concerning the severity of a medical condition claimed or the treatment

needed. While the qualifying relative states that her daughter works with well-known doctors specializing in preventive medicine, the record contains no evidence from these doctors or documentation of her daughter's medical background. There is no indication the applicant's wife has any condition for which medication or treatment is unavailable in Colombia, no explanation why she could not pursue her lifestyle medicine program there, and no evidence that she could not afford to pursue these approaches.

New evidence shows that the applicant's 2013 income from wages and pension totaled slightly over \$30,000, including \$21,500 in pension proceeds from social security in Colombia and about \$9,000 earned from teaching Spanish. Besides small bills for medication or medical services dating to 2006, the only documented recurring expense is property tax of around \$300. There is no clear statement on record how the applicant and his wife are meeting their expenses of day-to-day living or the amount of those expenses (including the costs of medical treatment discussed above). The record reflects they are, respectively, 74- and 72-years-old, and that she does not work. The applicant's wife claims to have medical and dental insurance here that she would forfeit by moving abroad. However, there is no indication of the cost of these benefits, the cost savings for covered services, or the out-of-pocket costs for these services in Colombia. Without such evidence, we are unable to conclude that moving back to Colombia to remain with the applicant would impose different economic circumstances than those currently being experienced in the United States. The applicant makes no showing that his Colombian pension would be insufficient to support him and his wife in Colombia or that the area where they would live is dangerous. The U.S. Department of State (DOS) indicates that security has improved significantly in recent years. *See Travel Warning—Colombia*, DOS, April 14, 2014.

Based on the totality of the circumstances, the evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Colombia. While sensitive to the disruptions caused by such a move, including the need to establish a residence and find new medical providers, the evidence fails to establish hardship that rises beyond mere inconvenience to the level of "extreme." Although the applicant's wife would no longer be living close to her relatives, there is no indication she would be unable to travel to visit them or that they would be unable to visit her. While recognizing that these circumstances would impose some hardship, the AAO concludes, based on the evidence that, were the applicant's wife to relocate with the applicant due to his inadmissibility, she would not suffer extreme hardship.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.



The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.