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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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Washington, DC 20529-2090



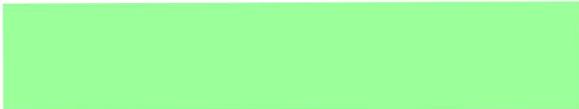
U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 08 2014**

OFFICE: NEWARK FIELD OFFICE

FILE: 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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 waiver application was denied by the Field Office Director, Newark, New Jersey and 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 obtaining an immigration benefit through willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his U.S. citizen spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 28, 2013.

On appeal, counsel asserts that the director made an erroneous finding and failed to consider all factors when evaluating extreme hardship to the applicant's spouse. Counsel states he will submit additional evidence and a brief within thirty days. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed September 26, 2013. The AAO has not received any additional evidence or a brief as of the date of this decision; the record therefore is considered complete.

The record contains, but is not limited to: Form I-290B; various immigration forms and applications; statements by the applicant and his spouse; marriage and birth certificates; an employment verification letter for the applicant's spouse; financial documents; and photographs. 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 that:

- (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 record reflects that the applicant procured a nonimmigrant visa from the U.S. Embassy in Bogota, Colombia through fraudulent means. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest the inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 (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.

The applicant's spouse is a 28 year-old native and citizen of the United States. She met the applicant in 2011, and they married in 2012. The applicant's spouse explains that she would suffer emotional hardship without the applicant in the United States. Before meeting the applicant, she saw a psychologist due to her obesity and has had several surgeries in both the United States and Colombia to lose and manage her weight. She states that before her surgeries, she lived an isolated life, had few friends and kept busy with her work and studies. After the surgeries she feared she would regain the weight and no one would accept her. The applicant empathizes with her medical condition and dietary restrictions and helps her by adapting to her diet, keeping track of her medications, and supporting her emotionally through her process of losing weight. She indicates that she plans to have more surgeries in Colombia and hopes the applicant will be there with her.

Although the record establishes the emotional support that the applicant provides to his spouse, the record lacks evidence of medical and psychological treatment the applicant's spouse has received. The only medical document counsel submits is an "invalid authorization notice" addressed to him, with no signature and no clear source indicated on the notice itself, though counsel asserts it is from [REDACTED]. It states that the release of medical records is not authorized because the authorization was not in compliance with the Health Insurance Portability and Accountability Act and lacked information about the dates of service. The record does not include counsel's request for medical records or any indication that this hospital is the only medical entity with records of the applicant's spouse's health history. Counsel submits no other evidence to corroborate claims about the applicant's spouse's medical conditions and treatment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Moreover, the record does not include information or evidence regarding the financial impact of the applicant's departure on his qualifying relative. The record contains a letter concerning the applicant and his spouse's bank account, their bank statements, credit-card bills, and the applicant's spouse's

tax forms from 2011 showing a single income of \$22,415. These documents do not show the financial hardship that the applicant's spouse may experience without the applicant. Although she states that she held two jobs and took a loan to pay for her surgeries, the record lacks evidence concerning her employment and loan. The evidence provided does not establish that the applicant assists her financially.

The AAO has considered all assertions of separation-related hardship to the applicant's spouse, including her age, health, and the emotional strain of separation from the applicant. Considered cumulatively, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states she cannot relocate to Colombia because of the crime, violence and minimal opportunities for employment. She indicates that she sought treatment and had at least two surgeries performed in Colombia, as her parents are native to Colombia. Each time she stayed with her extended family and felt unsafe. They frequently accompanied her when she left the house to prevent criminals from targeting her because she dressed like a foreigner and thus could be perceived as wealthy. The applicant states that Colombia is still experiencing violence from guerillas who protect the drug cartels. The U.S. Department of State's Travel Warning for Colombia dated April 14, 2014 stresses vigilance for U.S. citizens traveling to Colombia due to terrorism, violence and crime linked to drug cartels and gangs. However, the warning also states that tens of thousands of U.S. citizens safely visit Colombia each year for tourism, business, education and volunteer work, and security has significantly improved in recent years.

The applicant and his spouse also describe the competitive nature of employment in Colombia for entry-level positions and state that the social norm for employers is to refrain from hiring those over age 30. The applicant is 39 years old, and his spouse is 28 years old. The applicant and his spouse believe that, as a native and citizen of the United States, employers will hesitate to hire the applicant's spouse. The record does not contain evidence relating to the applicant's spouse's efforts to seek employment in Colombia, her educational background, or specific country conditions to support these assertions.

The applicant's spouse states that her immediate family lives in the United States and she feels comforted that she could visit them at any time. When she went to Colombia for her surgery, she missed her family and her few friends in the United States. She also states that she is the daughter of native Colombians and familiar with the culture. She explains that she traveled to Colombia several times for treatment and surgeries, has connections to doctors and medical services there, and relied on her family ties for her accommodations and protection during each stay.

The AAO has considered all assertions of relocation-related hardship to the applicant's spouse, including her ability to adjust to a country she is familiar with, her immediate family ties in the United States, and her fear of harm and concerns about unemployment in Colombia. Although the AAO acknowledges the various difficulties she would experience in the event the applicant's spouse chooses to relocate to Colombia, the evidence in the record is not sufficient to establish that the applicant's spouse would suffer hardship in the aggregate that would meet the extreme-hardship

standard. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he 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.