



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **NOV 06 2014**

OFFICE: HIALEAH

FILE: [Redacted]

IN RE:

[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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hialeah, Florida 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 pursuant to 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 a nonimmigrant visa by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and her children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 30, 2014.

On appeal, counsel for the applicant asserts that the denial of the applicant's waiver application was an abuse of discretion, as she established by clear and convincing evidence that a denial would result in extreme hardship for her spouse. Counsel further asserts that the correct standard was not applied and the totality of the circumstances not considered in the adjudication of the applicant's waiver.

In support of the waiver application and appeal, the applicant submitted identity documents, medical records for the applicant's spouse, an affidavit from the applicant, a letter from the applicant's daughter, a letter from the applicant's stepson, and other letters of support. The entire record was reviewed and considered in rendering this decision.

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:

- (1) 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 immigrant 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 submitted a Form DS-156, Nonimmigrant Visa Application, signed on August 18, 2005, indicating that she was married to [REDACTED], employed as a sales manager by [REDACTED] and that she had not previously been denied a visa.

During an interview on April 23, 2014, the applicant stated that she was not married to [REDACTED] at the time she completed the visa application. The applicant also asserted that she did not review the application herself, as it was completed by her boyfriend, [REDACTED]. The applicant stated that her boyfriend was unaware of her previous visa application and that she was employed by [REDACTED] while self-employed as a manicurist.

However, it is the applicant's burden to establish eligibility for the immigration benefit sought and the applicant does not dispute this ground of inadmissibility on appeal. Section 291 of the Act, 8 U.S.C. § 1361. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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. See *Salcido-Salcido*, 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.

The record reflects that the applicant is a 40-year-old native and citizen of Colombia. The applicant’s spouse is a 44-year-old native of Colombia and citizen of the United States. The applicant is currently residing with her spouse and children in [REDACTED] Florida.

Counsel for the applicant asserts that the absence of the applicant could have a devastating effect on the emotional stability of her spouse. Counsel further contends that separation from the applicant would have an adverse impact on the applicant’s spouse’s physical health.

The applicant’s spouse asserts that he has been treated for depression since 2011, receiving therapy for his condition. The applicant’s spouse states that he and the applicant are extremely close and he depends upon her for emotional support. The record contains letters of support stating that the applicant and her spouse have a loving relationship.

The record does not contain any psychological documentation for the applicant’s spouse submitted with the applicant’s instant waiver application. However, the record does contain a letter from a staff therapist, dated July 7, 2011, submitted in conjunction with the applicant’s previous waiver

application. The letter states that the applicant's spouse received psychotherapy services through [REDACTED] to address his depressed and anxious mood. At the time, the applicant's spouse indicated that his poor financial situation and his wife's immigration issues were triggering his psychological state. The letter states that the applicant's spouse received support, feedback and education on coping skills and showed signs of improvement, feeling less concerned and more hopeful during his last session. The record does not contain any updated information concerning the applicant's spouse's psychological state or supporting documentation indicating continued therapy. Indeed, the letter referencing the applicant's spouse's receipt of psychological services, from 2011, refers to a last session. 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)).

The applicant's spouse asserts that he suffered an episode of chest pains in 2012, resulting in hospitalization. The applicant's spouse contends that it is difficult for him to continue with his daily chores, due to his physical and psychological conditions. The record contains medical records for the applicant spouse indicating diagnoses of hypertension and hyperlipidemia. The record also indicates one follow-up medical visit for the applicant's spouse in 2013. The submitted medical documents consist of medical notes and prescriptions and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. It is noted that there is no indication that the applicant's spouse has failed to continue in his employment and his role as the sole financial provider of his household despite the existence of any psychological or medical conditions.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

Counsel for the applicant does not make any assertions concerning any hardship the applicant's spouse would experience upon relocation to Colombia. It is noted that the applicant's spouse is a native of Colombia and his submitted Form G-325A, Biographic Information, indicates that his parents are residing in Colombia.

The record contains a certification of the applicant's spouse, submitted with the applicant's prior waiver application. In his certification, the applicant's spouse asserted that he would leave behind his son, who depends upon him for emotional and financial support, if he left the United States. The applicant's spouse also asserted that he would have to sell his house and close his business upon relocation. As noted in a previous decision, the applicant's spouse's son is an adult, currently 20 years of age. The record contains a letter from the applicant's spouse's son stating that the applicant loves her spouse and cooks the applicant's spouse's son his favorite foods when he stays with them. There is no supporting documentation indicating that the applicant's spouse's son is

currently unable to support himself or that he would be unable to stay in contact with his father in the event of the applicant's spouse's relocation. Further, the applicant's spouse's Form G-325A states that he was employed for eight years in Colombia, as a cashier supervisor. Accordingly, there is no indication that the applicant's spouse would be unable to obtain employment upon relocation to Colombia.

The applicant's spouse, in his previously submitted certification dated June 5, 2012, also asserted that it was not safe to reside in Colombia. The Department of State issued a travel warning for Colombia, dated April 14, 2014, stating that security in Colombia has improved significantly in recent years.

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if he relocated to Colombia.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 U.S. citizen spouse 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.