



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 30 2014** OFFICE: NEWARK FILE: [REDACTED]

IN RE: [REDACTED]

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:

[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, Newark, New Jersey denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion. The motion will be granted and the prior decision is affirmed.

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 Field Office 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, we determined that the applicant had not established that his spouse would suffer extreme hardship if the waiver application is denied and dismissed the appeal. *See Decision of the AAO*, dated May 8, 2014.

On motion, the applicant's attorney submits new evidence that he asserts shows the applicant's spouse has health, emotional and financial hardships and that she relies on the applicant for assistance. In addition, counsel states that the applicant would experience hardship in Colombia related to her lack of family ties, her difficulty finding work, and the drop in her standard of living.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant provides new facts and evidence regarding his qualifying spouse's hardship, the motion to reopen is granted.

In support of the instant motion, the applicant's attorney submits a prescription from the qualifying spouse's doctor in Colombia, medical documentation from the United States; country-conditions information relating to Colombia; and a letter confirming that the applicant's spouse saw at least one psychotherapist. The record also includes, but is not limited to, various immigration forms and applications; statements by the applicant and his spouse; a marriage certificate and identification documents; 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 [REDACTED] 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-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*, 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 record reflects the applicant’s spouse is a 28 year-old native and citizen of the United States who married the applicant in [REDACTED]. The applicant’s spouse explains that she would suffer emotional hardship without the applicant in the United States, because he has helped her with her emotional and medical treatment related to her obesity. She has had several surgeries in the United States and Colombia to lose and manage her weight, before which she lived an isolated life, had few friends and kept busy with her work and studies. The applicant helps her by, among other things, 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.

In our previous decision, we acknowledged that the applicant has shown he provides his spouse with emotional support. However, the record lacked evidence regarding the qualifying spouse’s medical condition and the medical and psychological treatment she received. On motion, the applicant submits a letter indicating that the qualifying spouse “continuously attended” psychotherapy from

August 2006 to November 2007; according to the letter, her records are not available because her psychologists are no longer with the practice. While this letter shows that the qualifying spouse saw at least one therapist over a 15-month period several years ago, the record still lacks evidence with details about the nature and extent of her past psychological condition, whether she currently suffers from psychological issues or whether she is prone to future psychological issues due to separation from the applicant or relocation to Colombia.

Further, concerning the applicant's medical issues, the applicant submits additional forms on motion to demonstrate that his attorney had requested the qualifying spouse's medical records and had received authorization to obtain her records from April through May of 2008, yet no records were provided. The applicant also provides a handwritten letter, dated July 26, 2006, from the qualifying spouse's doctor in New York confirming that she is morbidly obese and a candidate for bypass surgery; a letter from the applicant's health insurance provider showing she was approved for services at [REDACTED]; and an operative note summary of her April 5, 2007 surgery for laparoscopic partial gastrectomy and liver biopsy. In addition, the applicant submits a letter from the qualifying spouse's doctor, dated August 21, 2014, indicating that she would be undergoing "major surgery" in September 2014; the letter does not state what type of surgery was scheduled. Moreover, the applicant provides laboratory results dated February 4, 2014, showing the qualifying spouse was pregnant but suffered a miscarriage. One handwritten letter contains medical terminology and abbreviations that are not easily understood, another letter has limited information, and the submitted laboratory results are undefined. Documents such as the laboratory results were prepared for review by other medical professionals and do not clearly explain the current medical condition of the applicant's wife. Absent an explanation in plain language from the treating physician of the exact nature and severity of her current condition and a description of any treatment or family assistance currently needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Moreover, as stated previously, the record does not include information or evidence regarding the financial hardship the applicant's qualifying relative would experience if she remains in the United States, and the applicant provides no new evidence regarding her potential financial hardships on motion. 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 we noted in our appeal decision that her claims that she held two jobs and borrowed money to pay for her surgeries were uncorroborated by objective evidence, the applicant submits no new evidence concerning these claims. The evidence provided does not establish that the applicant assists her financially.

We have 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, as well as all the additional evidence provided regarding the applicant's medical and psychological hardships. We find that the evidence, considered cumulatively, is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

On motion, the applicant's attorney indicates that his spouse will suffer financially and will be unable to undergo additional surgeries if she relocates to Colombia. As stated in our previous decision, 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 now 40 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. We stated in our prior decision that the record lacked evidence of the applicant's spouse's efforts to seek employment in Colombia, her educational background, or specific country conditions addressing work opportunities. While the applicant supplements the record with reports related to unemployment and other economic issues in Colombia on motion, the new evidence does not demonstrate how these issues would specifically affect the applicant's spouse. For example, the applicant does not address whether teachers with the qualifying spouse's educational background experience problems finding employment in Colombia. The statistics he submits concern females younger than the applicant with primary-school education and unemployment figures for females between the ages of 15 and 24, though his spouse would not be a member of either category. The reports he submits also are generally positive about Colombia's economic prospects, reflecting a drop in unemployment rate between 2013 and 2014 and an expansion of the gross domestic product's annual growth rate. Though we indicated in our decision dismissing the appeal that the record lacked evidence concerning the applicant's spouse's efforts to find work in Colombia, he provides no evidence addressing this matter with his motion. Moreover, as stated above, the record does not reflect the qualifying spouse's current medical condition. Although the assertions of counsel and the applicant's qualifying spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

The applicant's attorney also asserts that having family in Colombia will not mitigate the trauma of his spouse's relocation and there is no indication that her family in Colombia will support her, as her prior stays have been only temporary. However, the applicant submits no information about the type of trauma that the applicant's spouse will face and does not submit corroborating evidence for his attorney's assertions that his spouse's relatives in Colombia will not help her there. Further, as stated in our prior decision, the qualifying spouse is the daughter of Colombians, is familiar with the culture, has traveled to Colombia several times for treatment and surgeries, has connections to doctors and medical services there, and has relied on her family ties for her accommodations and protection during each stay. The record lacks evidence to support the applicant's attorney's assertions that her family will not assist her upon relocation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We have considered all the evidence supporting the qualifying spouse's relocation-related hardship, 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 we acknowledge the difficulties she would experience in the event she 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 motion is granted and the underlying application remains denied.