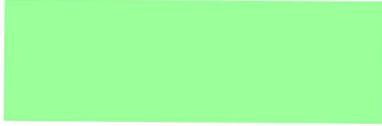




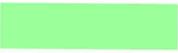
U.S. Citizenship
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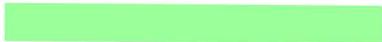


Date: **SEP 17 2014**

Office: PHILADELPHIA, PA

FILE: 

IN RE:

Applicant: 

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:



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, Philadelphia, Pennsylvania, denied the waiver application, and the Administrative Appeals Office (AAO) remanded the matter to the Field Office Director on a subsequent appeal. The matter is now again before the AAO. 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the mother of two U.S. citizen children and one lawful permanent resident child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her 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 (Form I-601) accordingly. *See Decision of the Field Office Director*, August 8, 2011.

On appeal, we noted that the record contains a memorandum from the California Service Center dated November 16, 2011, which states the applicant's Petition for Alien Relative, Form I-130, was administratively closed that day because she "has already acquired lawful permanent resident status through other means." We further noted that after a review of the record and search of available databases, it could not be determined whether the applicant was granted lawful permanent resident status. As such, because of the discrepancy in the record regarding the applicant's lawful permanent resident status, we remanded the case to the Field Office Director to address this issue. *See Decision of the AAO*, dated December 20, 2012.

The Field Office Director determined that the memorandum from the California Service Center was erroneous, and following a thorough review of the file, concluded that the applicant has never been granted lawful permanent resident status. The Field Office Director certified the matter back to the AAO on May 7, 2014.

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; statements by the applicant and the applicant's spouse; financial documentation; a psychological evaluation of the applicant, the applicant's spouse, and two of the applicant's children; country conditions information on Colombia; 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 record indicates that the applicant attempted to enter the United States on February 17, 2002 using an altered nonimmigrant visa that had been issued to another person, with the applicant's photograph substituted for the original photograph. The applicant does not contest her inadmissibility.

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

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....

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 husband 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 applicant’s spouse will experience financial hardship if the waiver application is not approved and the applicant departs the United States. Financial documentation in the record includes a copy of the 2010 federal income tax for the applicant and her spouse, indicating an adjusted gross income of \$42,110. The applicant’s spouse states that he is currently employed as a bus driver with the Metropolitan Transit Authority in New York. An employment statement from the Metropolitan Transit Authority in the record dated September 20, 2011 indicates that the applicant’s spouse began his employment on October 25, 2010 and earned \$5,361 in 2010 and \$29,049 in 2011. The applicant’s spouse states that he works full time to financially support the family and that he would be unable to take care of the children in the absence of the applicant. However, counsel states that the applicant’s spouse’s entire family resides in the United States. The record fails to provide any information regarding the extent to which the applicant’s spouse can rely on family members to assist in taking care of the children if separated from the applicant. The evidence submitted to the record is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant’s absence.

The applicant’s spouse states that he was diagnosed with kidney stones, which requires him to follow a special diet, and that he relies on the applicant to assist him with his diet. However, the applicant submits no evidence in support of this assertion. 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)).

Documentation submitted with the applicant’s Form I-601 included a psychological evaluation of the applicant, the applicant’s spouse, and two of the applicant’s children. The report included a diagnosis that

the applicant's spouse has adjustment disorder with mixed anxiety and depressed mood. Although we are sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that hardship to the applicant's spouse and the symptoms he has experienced, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The applicant and her spouse have two children, and the applicant also has a child from a previous marriage living with the family. 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, his situation if he 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 his 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 he were to relocate to the Colombia, counsel notes that the applicant's spouse was born in the Dominican Republic and is a United States citizen. Counsel further states that the entire family of the applicant's spouse resides in the United States. The applicant's spouse has never resided in Colombia, and is unfamiliar with the culture and customs of that country. Counsel contends that that it would be difficult for the applicant's spouse to find employment to support his family if her were to relocate to Colombia to be with the applicant.

Moreover, the record indicates that the applicant's spouse has two children from a previous marriage, and that his ex-wife has custody of the children. The applicant's spouse states that he continues to provide support for his two children. The psychological report included in the record states that the applicant's spouse speaks to his children every day, pays child support, and the children stay with him on holidays and vacations. The applicant's spouse would be separated from his children if he relocates to Colombia.

We have considered cumulatively all assertions of relocation-related hardship to the applicant's U.S. citizen spouse were he to move to Colombia, including his strong family ties to the United States, the impact of his relocation to a situation that is unfamiliar to him and the resulting difficulty finding the means to support his family, and his separation from his two children from a prior relationship. Considered in the aggregate, we find that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he relocated to Colombia to be with the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual

intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.