



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 22 2015** Office: MOUNT LAUREL FIELD OFFICE 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
for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mount Laurel, New Jersey, 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her daughter and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her lawful permanent resident spouse.

The field office director found that the applicant had established that her spouse would experience extreme hardship as a consequence of separation from the applicant, but had failed to establish that her spouse would experience extreme hardship if he were to relocate to reside with the applicant. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated August 27, 2014.

On appeal the applicant contends that she has established that her spouse would suffer extreme hardship if he were to relocate to Colombia to reside with her. With the appeal the applicant submits a statement. The record contains statements from the applicant, her spouse, and her son; medical documentation for the applicant's spouse; financial documentation; and country information for Colombia. 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.

Section 212(i) of the Act provides that:

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.

First we will address the finding of inadmissibility. The record reflects that the applicant entered the United States on August 27, 2000, at Miami with a B-2 visitor visa, issued on May 27, 1999, with authorization to remain until February 20, 2001. The field office director determined that as the applicant had obtained employment within two weeks of entry by presenting a fraudulent permanent

resident card and social security number, her intention upon entry was not to visit temporarily but rather stay permanently. On Form I-601 the applicant states that she came to the United States as a B-2 visitor but had intended to stay beyond the six-month authorized period to work and save her house in Colombia, which she was about to lose due to non-payment. She stated that her boss had been kidnapped by guerrillas, the travel agency where she worked shut down, and she was unable to find other employment, so she had decided to come to the United States to work. The record also shows that at the applicant's interview for adjustment of status she stated that she told an immigration inspector that she was coming for tourism when in fact she intended to stay. Based on this information the field office director found the applicant to be inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act.

The field office director also found the applicant inadmissible for misrepresentation for obtaining another non-immigrant visa on April 30, 2004, at the U.S. embassy in Colombia by having sent her passport to her daughter, who then arranged to have a visa application submitted to the embassy. The applicant contends that in 2004 one could renew a U.S. visa through an agency. The applicant states that she sent her passport to her daughter, who then had an agency prepare a visa application to be presented to the embassy, that her daughter signed the applicant's name, and the B-2 visa was mailed to the applicant's house in Colombia. The applicant asserts that she did not commit fraud because she did not sign the visa application and never used the visa.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The record shows that the 2004 visa application, signed March 11, 2004, bears the applicant's signature as the preparer and lists her address as in Colombia when in fact she was residing in the United States at the time. The application also indicates that the applicant last visited the United States in 2000 and remained for 15 days and states she never violated terms of a U.S. visa or was unlawfully present, when in fact following her August 27, 2000, entry to the United States the applicant did not depart within her period of authorized stay, which expired February 20, 2001.

By her own admission the applicant entered the United States as a B-2 visitor with the intention to remain and work. Although the applicant was not in Colombia to directly file a non-immigrant visa application in 2004 and did not use the visa once obtained, the application contained information which the applicant knew was incorrect in an effort to procure a nonimmigrant visa to the United States. Thus we concur with the field office director's finding that the applicant is inadmissible for misrepresentation and requires a waiver of inadmissibility.

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 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. *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)); 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.

As the field office director determined that the applicant had established extreme hardship to her spouse if he were to remain in the United States while she returned to Colombia, we will only consider whether the applicant has established that her spouse will experience extreme hardship if he were to relocate to Colombia to reside with her due to her inadmissibility.

The applicant states that if her spouse relocates to Colombia she fears his health will deteriorate. The spouse states that he has been dealing with cancer for more than 10 years, sees an oncologist every month, and risks the cancer advancing. A note from the spouse’s oncologist states that he has been diagnosed with prostate cancer, gets Lupron injections from his urologist, needs to be monitored, and may eventually need chemotherapy. The record contains insurance claims for lab work and medication for anemia, osteoporosis, and blood pressure, and shows that the spouse’s medical insurance is obtained through the applicant. The spouse asserts that he cannot afford comparable medical treatment in Colombia, where cancer treatment is expensive, and he cites news reports of a lack of beds, doctors, ambulances, and intensive care units, and states that people with private health insurance have more access to treatment than those with government insurance. According to the U.S. Department of State, medical care in Colombia is adequate in major cities but varies greatly in quality and accessibility elsewhere. It states that many private health care providers

require that patients pay for care before treatment and that the uninsured without financial resources may be relegated to seeking treatment in public hospitals where the standard of care is below U.S. standards. *See Travel Warning-U.S. Department of State*, dated December 10, 2014.

The applicant states that she cannot compete with younger workers in Colombia, and the applicant's spouse asserts that in Colombia he will be unable to work to supplement his social security payments. He states that people more than 45 years old are considered too old for employment in Colombia, and news articles submitted by the applicant report that it is difficult for those older than 45 years to reenter workforce. The applicant's spouse further states that although he has five siblings in Colombia they cannot help as they had a falling out over money and that three of them are older than he. He also states that his daughter in Colombia earns a low income, has young children, and has her husband to support her.

The spouse further states that he fears violence, kidnappings, and murder due to ongoing conflict between the government and guerilla groups, and states that his daughter has fled Bogota because of high crime. He states that he is afraid he will be a target for kidnaping since criminals may think he has money because he has relatives in the United States to pay ransom.

The U.S. Department of State indicates that terrorist and criminal activities remain a threat throughout the country. It states that small towns and rural areas can be extremely dangerous due to the presence of terrorists and criminals, and that kidnapping remains a threat as terrorist groups and criminal organizations hold civilians for ransom. *See Travel Warning-U.S. Department of State*, dated November 14, 2014.

The applicant's spouse also states that he fears that if he relocates to Colombia he will lose his lawful permanent resident status in the United States. We note that a lengthy departure from the United States could cause him to lose his U.S. lawful permanent resident status. *See* section 223 of the Act, 8 U.S.C. § 1203.

Having reviewed the preceding evidence, we find it to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Colombia. In reaching this conclusion we consider the spouse's concerns, given his age, about his medical condition, financial situation, and possible personal security in light of conditions in Colombia. A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her lawful resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and

humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's spouse would face if the applicant is not granted this waiver, the applicant's long-term employment, her lack of a criminal record, and letters of support. The unfavorable factors in this matter are the applicant's misrepresentation upon entry to the United States and in obtaining a non-immigrant visa, and her use of fraudulent documentation to obtain employment.

We note that a finding of extreme hardship carries considerable weight in the exercise of discretion and have carefully considered the extent to which the spouse's hardship mitigates the negative factors in this case. In reaching this decision, we note the applicant's misrepresentation when she entered the United States as a B-2 visitor with the intention to remain and work and that she used a fraudulent Permanent Resident Card and social security number to obtain employment. As noted above, the applicant's 2004 visa application contained information which she knew was incorrect, including listing her address as in Colombia when in fact she was residing in the United States at the

time and indicating that she had visited the United States in 2000 and remained for 15 days when in fact she has not departed.

At her initial adjustment of status interview in 2011, the applicant told the USCIS officer that she had received two non-immigrant visas and had lost her previous passport containing those visas, but at a 2013 follow-up interview she produced that passport. She admitted that it had not been lost but rather that she feared by telling the truth she might not have her application approved. Further, as noted in the field office director's decision, the applicant's qualifying relative, her lawful permanent resident spouse, also obtained a U.S. visa through misrepresentation in 2004 and appears to have required a waiver of grounds of inadmissibility when he applied for adjustment of status, though he did not apply for a waiver at that time.

We find the applicant's numerous actions involving immigration violations to be a significant negative factor in this case. Thus, while we regret the hardship that the applicant's spouse will face as a result of a denial of the applicant's waiver request, we do not find the favorable factors in the present matter to outweigh the negative and will not favorably exercise the Secretary's 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.