

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 02 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 willfully misrepresenting a material fact to procure an immigration benefit. She is the spouse of a U.S. citizen and has one U.S. citizen child. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The Director concluded that the applicant failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Director*, dated June 5, 2014.

On appeal, the applicant's spouse asserts that he is experiencing emotional and financial hardships due to his separation from his wife and stepdaughter, and that he would suffer financial hardships if he relocated to Colombia.

The record contains, but is not limited to: letters from the applicant, her daughter, her brother, the qualifying spouse, his son and their friends; Columbian criminal records regarding the applicant's daughter's case wherein she was a victim of violence and theft in Colombia and a record indicating that the applicant has no criminal record in Colombia; financial documentation; identification documentation for the applicant, her daughter, her brother, her spouse, and the qualifying spouse's son; proof of payment to a lawyer; a psychological assessment of the qualifying spouse; a psychological evaluation from the applicant's daughter's school; a letter sent by the applicant to a family court judge in New Jersey regarding her failure to appear; and country condition materials. In addition, the record also contains receipts of money sent to the applicant from her spouse in Spanish.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that on or about [REDACTED] 2004 at [REDACTED] Airport, New Jersey, the applicant presented a Colombian passport containing a fraudulent back-dated Colombian admission stamp in an attempt to enter the United States. The applicant is inadmissible for misrepresenting a material fact pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

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

- (1) The Attorney General [now Secretary 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 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 [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. Hardship to the applicant or his child 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 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*, 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 at 1293 (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.

With respect to the qualifying spouse’s hardship upon separation from the applicant, he states that he is experiencing financial and emotional hardships as a result his separation from the applicant and her daughter. In a letter, the applicant’s spouse provides an explanation of his financial situation. He states that he earns approximately \$3,000 per month, and after paying for his expenses including rent, gas for his car, automobile insurance, television and cell phone service, he is left with \$400 per month for other living expenses. He also indicated that he has spent about \$8,000 to visit the applicant and her daughter and pay for their living expenses and school for the applicant’s daughter. To support these assertions, the record contains several of the qualifying spouse’s earning statements from one employer, proof of his auto insurance, as well as a utility bill, a television bill and cell phone bills in the qualifying spouse’s son’s name. While this evidence provides support for the applicant spouse’s assertions with respect to his earnings and expenses, it does not fully detail his financial situation. The psychological assessment indicates that the qualifying spouse has two employers and the record only contains documentation of income from one employer. Further, no banking or tax documentation was submitted. Moreover, the record does not contain any financial supporting documentation to demonstrate the financial position of the applicant or to establish the extent of the financial assistance she requires. The record contains receipts for money sent to the applicant indicating that in 2012 and 2013, the applicant’s spouse sent her \$2,200, which over the course of two years would equate to less than \$100 per month. The applicant’s spouse indicates that she works very hard to try to “make ends meet,” but her specific income is not stated or supported by the record. However, in a letter written by the applicant to a family court judge in New Jersey, she states that her daughter’s father pays \$130 per week in child support and that her

expenses are approximately \$503 per month. The Petition for Alien Relative (Form I-130) indicates that the applicant was employed from August 2006 until at least the date the form was signed in October 2012 and the record indicates that she has a degree in computer science. The applicant's brother refers to applicant in his submitted letter as a computer science professional in Colombia. As such, the applicant's earnings and whether she requires the support of her spouse has not been fully established through the documentation provided.

The applicant asserts that her daughter was attacked in Colombia so that she sent her to the United States for protection. The applicant contends that she still feels threatened living in Colombia. The record contains evidence regarding the theft of the applicant's daughter's bicycle and her attack. It is noted that Congress did not include hardship to an alien or an alien's child as factors to be considered in assessing extreme hardship under section 212(i) of the Act. As the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, hardship to the applicant and applicant's child will be considered only insofar as they affect the applicant's spouse.

With regard to the emotional hardship that the applicant's spouse is experiencing upon separation, he states that his stress level would diminish or disappear completely if he did not have to worry about the safety of the applicant and her daughter. The psychological assessment indicates that the applicant's spouse is experiencing depression, sleep disturbance, difficulty concentrating, anxiety and worry. The psychologist also reports that the applicant's spouse has become increasingly socially isolated. Although we are sympathetic to the applicant's spouse's circumstances, the record does not demonstrate that psychological hardship to the applicant's spouse and the symptoms he has experienced, according to the psychologist, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (common results of deportation are insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation).

Therefore, based on the record before us, we are unable to find that separation from the applicant would result in extreme hardship for the qualifying spouse. While the record contains sufficient evidence to establish that the applicant's spouse would experience some emotional hardship due to separation, the evidence of psychological hardship does not support that it rises to the level of extreme. There is similarly insufficient evidence to establish that the applicant's spouse would be unable to meet his financial obligations or that he would experience financial hardship that rises above what is common. Considering these hardships upon separation in the aggregate, the record does not establish that they rise to the level of extreme hardship.

Concerning the hardships the applicant's spouse would experience if he were to relocate to Colombia with the applicant, the applicant's spouse, a native of Colombia, indicates that he would lose his retirement and his financial stability. The psychological assessment indicates that the qualifying spouse has been working for his current employer for 25 years, and that he would lose his secure job for lower wages in Colombia. The record includes evidentiary support that the applicant's husband is paying into the social security system insofar as his earnings statements indicate the same. Moreover, the psychologist indicates that the qualifying spouse would be returning to a dangerous environment, if he returned to Colombia. The record contains country conditions supporting the assertions that there are issues relating to violence in Colombia. The most

recent Department of State Travel Warning for Colombia, dated June 5, 2015, strongly encourages U.S. citizens to exercise caution and remain vigilant as terrorist and criminal activities remain a threat throughout the country. The warning also indicated that explosions occur throughout Colombia on a regular basis, including in [REDACTED] where the applicant and qualifying spouse were married. We therefore conclude that, were the applicant's spouse to relocate to Mexico with the applicant, he would suffer extreme hardship due to his length of residence in the United States, his long-term employment, as well as the benefits and financial security associated with such employment, his ties to the United States, namely his son, and the security concerns regarding relocation to Colombia.

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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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.

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 balancing positive and negative factors to determine whether the applicant merits this 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.