



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 23 2015

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 seeking to procure a benefit under the Act through fraud or the willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her spouse.

The District Director found that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated November 8, 2014.

On appeal, the applicant, through counsel, asserts that the District Director erred in finding that the qualifying relative would not experience extreme hardship; failed to consider all of the hardship factors; and failed to give proper weight to some of the factors. *Form I-290B, Notice of Appeal or Motion*, filed December 8, 2014.

The record includes, but is not limited to, a brief, statements from the applicant and her spouse, financial records, medical records, photographs, a psychological evaluation, and country-conditions information about Colombia. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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 [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.

The record reflects that on June 29, 2000, the applicant was paroled into the United States by presenting a Spanish passport under the name [REDACTED]. As such, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking a benefit under the Act through willful misrepresentation of a material fact. The applicant does not contest the finding 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. 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. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services (USCIS) 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.

We will first address hardship to the applicant's spouse if she relocates to Colombia. The applicant, through counsel, states that her spouse owns a home and has stable employment in the United States. The applicant's spouse, also a native of Colombia, states that she has lived in the United States nearly half of her life, since March 1983; she fears violence and discrimination due to being a same-sex couple; the LGBT community in Colombia is marginalized and subject to violence and discrimination; 90 percent of the population in Colombia is Catholic, and the Catholic Church considers homosexual activity a moral disorder; her family in Colombia are devout Catholics and she has not disclosed her marriage to them; and as a result she would experience emotional hardship by not telling her family about her marriage. The record includes country-conditions information discussing discrimination against the LGBT community and their marginalization in Colombia.

The applicant's spouse also states that she would experience financial hardship upon relocation due to the high rates of poverty and unemployment and because of age discrimination in employment she would not be hired. The applicant, through counsel, states that the applicant's spouse will lose approximately \$62,000 if she sells her home, because it currently is valued lower than the purchase price, and she could not afford to pay the mortgage if she kept the house. The record includes evidence of the applicant's spouse's home ownership, the value of her home and her employment in the United States.

The applicant's spouse states that Colombia continues to have issues with terrorism, kidnapping, violence and crime. The psychologist who evaluated the applicant's spouse states that the applicant's spouse has faced traumatic experiences in her life, including the violent death of a cousin who she found bleeding at her doorstep. The psychologist claims that the applicant's spouse fears for her and the applicant's lives, if they were to return to Colombia. The record includes a U.S. Department of State Travel Warning for Colombia, dated April 14, 2014, which addresses general safety issues and narco-trafficking.¹

The applicant, through counsel, asserts that her spouse sustained lumbar and cervical spine injuries from an August 20, 2014, car accident; she is taking pain medication; and she could not afford medical treatment in Colombia. The applicant's spouse's physician states that she was in a car accident; he

¹ The Travel Warning for Colombia was updated on June 5, 2015, stating "terrorist and criminal activities remain a threat throughout the country." *See* <http://travel.state.gov/content/passports/english/alertswarnings/colombia-travel-warning.html>, last accessed on July 16, 2015.

diagnosed her with cervical and lumbar spine injuries, cervical and lumbar disc bulges, symptoms of cervical and lumbar radiculopathy, and disc desiccation; and he has been treating her for approximately four months for these issues.

The record reflects that the applicant's spouse has resided in the United States for a lengthy period of time, and she has ties to the United States. The record indicates that she would be experience emotional hardship caused by her family's lack of acceptance of her marriage and issues in Colombia related to discrimination against the LGBT community. In addition, she would experience financial hardship in Colombia. The general country conditions reflecting the threat of violent criminal activity, combined with her personal experience, are another hardship factor. In addition, she has significant medical issues. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if she relocated to Colombia.

Concerning the hardship that the applicant's spouse would experience if she remained in the United States, the applicant's spouse states that loves the applicant and their lives are completely intertwined; and separation from the applicant would be totally unbearable for her. The applicant states that she and her spouse do not have many friends due to their sexual orientation; they depend on each other emotionally and economically; her spouse has been anxious and depressed; and her spouse cries, cannot sleep and has trouble concentrating, particularly since the applicant began the immigration process.

The psychologist states that the applicant's spouse's functioning is consistent with dysthymic disorder, meaning she struggles with chronic low-grade depression; she is experiencing high levels of dysphoria and depression; and she is experiencing severe anxiety. The psychologist adds that the applicant's spouse is experiencing high levels of stress and low resiliency and that her insomnia has worsened since the applicant's immigration process started. The psychologist concludes that without the applicant, her spouse would become isolated.

The applicant, through counsel, asserts that her spouse takes medication for depression and anxiety; she sustained lumbar and cervical spine injuries from an August 20, 2014, car accident; and she takes pain medication. The record reflects that she was advised by her physician to use a natural sleep aid. The record includes the applicant's spouse's prescription notes for an antidepressant and sleep medication. As mentioned, the applicant's spouse's physician states that she was in a car accident and she was diagnosed with numerous injuries.

The applicant's spouse states that she also will suffer financial hardship without the applicant's income; she could not pay the mortgage payment; and she would not be able to retire soon as planned. The applicant submits numerous household bills, including a mortgage statement, car-loan bill, and utility bills. The applicant's spouse's employer states that she works as a certified nurse assistant at a rate of \$16.46 per hour. The record reflects that the applicant is working as a house cleaner.

The record reflects that the applicant's spouse would experience significant emotional hardship without the applicant. In addition, the applicant's spouse would experience financial hardship that would affect their future plans, and she has significant medical issues. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's U.S. citizen spouse, extreme hardship to her spouse and her lack of a criminal record. The unfavorable factors include the applicant's misrepresentation and her unauthorized stay.

We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.