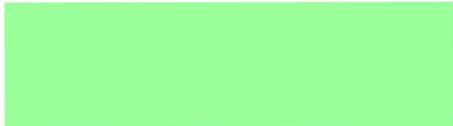




U.S. Citizenship  
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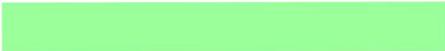
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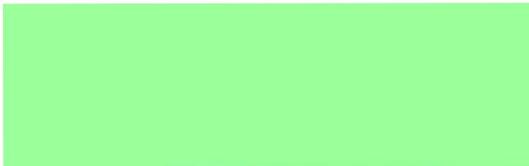
OFFICE: NEWARK

FILE: 

IN RE: 

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

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. On appeal, the AAO also determined that the applicant failed to establish extreme hardship for a qualifying relative and dismissed the appeal accordingly.

In the applicant's motion, counsel asserts that the applicant did not knowingly make a misrepresentation to gain entry to the United States, as he was unaware that the I-551 stamp with which he entered was fraudulent. Counsel further asserts that, in the alternative, the applicant has demonstrated that his spouse would experience extreme hardship if his waiver application is denied. In support of the motion, the applicant submitted medical documentation concerning his spouse. The entire record was reviewed and considered in rendering this decision.

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:

- (1) 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 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 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...

On June 4, 1994, the applicant entered the United States by presenting a passport containing a fraudulent I-551 stamp. The applicant asserts that after a notario filed immigration applications on his behalf, he was given an employment authorization card on April 5, 1994, and a I-551 stamp in his passport a week later. The applicant contends that he signed blank immigration applications

and submitted supporting documentation, but the notario filed the applications on his behalf. The applicant also asserts that he was unaware that the I-551 stamp was fraudulent at the time that he entered the United States, as he believed himself to be a lawful permanent resident at the time of his entry.

Counsel for the applicant asserts that the applicant became aware that his I-551 was fraudulent only after this was indicated to him by an attorney. Counsel contends that the applicant made an innocent mistake, as he was given the I-551 stamp after he was fingerprinted and photographed in connection with his immigration applications and was admitted to the United States with the stamp on June 4, 1994. Counsel asserts that, based upon a preponderance of the evidence, the applicant did not obtain an immigration benefit through fraud or misrepresentation.

The burden is on the applicant to demonstrate by a preponderance of the evidence that he did not willfully present a fraudulent I-551 stamp to gain entry into the United States. *See* Section 291 of the Act, 8 U.S.C. § 1361. The record contains a Form I-485, Application to Register Permanent Residence or Adjust Status, signed by the applicant and filed on March 23, 1994. The Form I-485 does not indicate that it was prepared by any person other than the applicant. The underlying petition for the Form I-485, a Form I-130, Petition for Alien Relative, was also signed by the applicant on February 17, 1994. The applicant and the individual who filed the Form I-130 on his behalf were instructed to appear for an interview on July 27, 1994. As they did not appear, the applicant's Form I-485 was denied on September 5, 1994.

The applicant asserts that a notario filled out immigration applications for him, which the applicant signed as blank forms. However, the applicant signed his Form I-485, filed March 23, 1994, under a certification stating that the application and the evidence submitted with it was all true and correct. As such, the applicant's signature indicates his awareness of and certification to the truthfulness of the facts contained within his application. Further the applicant, at the time of his entry to the United States on June 4, 1994, would be aware that he had not yet attended his adjustment of status interview, so that he could not have been granted lawful permanent residence. The applicant has failed to satisfy his burden of demonstrating his belief that he was a lawful permanent resident on June 4, 1994, when he entered the United States with a fraudulent I-551 stamp. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation.

Counsel for the applicant asserts the applicant's entry should have been considered in light of the Board of Immigration Appeal's decision in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). In *Matter of Quilantan*, a respondent entered the United States as a car passenger waved through a border crossing by an immigration official and was determined to have been admitted to the United States. *Id.* The issue addressed was procedural regularity for admission, not inadmissibility. Whether the applicant was admitted is related to his ability to apply for adjustment of status, not the present waiver application. It does not appear that this has been questioned by the field office director, but in any event, we do not have jurisdiction over adjustment of status pursuant to Form I-485, Application to Register Permanent Residence or Adjust Status. As such, we will not consider whether the applicant was lawfully admitted to the

United States, as it has no bearing on the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 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.

The record reflects that the applicant is a 52-year-old native and citizen of Colombia. The applicant’s spouse is a 56-year-old native of Colombia and citizen of the United States. The applicant is currently residing with his spouse and child in [REDACTED] New Jersey.

Counsel for the applicant asserts that the applicant and his spouse have been married since April [REDACTED] so that the applicant’s spouse has been greatly dependent upon his support since then. Counsel contends that the applicant’s spouse earned 21,680 dollars in 2005 and that the poverty guidelines indicate that 15,510 is the minimum income needed to support a family of two. Counsel further asserts that the applicant’s spouse would be responsible to support her stepson and pay for his college tuition each year.

It is initially noted that though counsel refers to the applicant’s spouse’s stepson, and asserts that the son’s mother is the applicant’s prior spouse, the record reflects that the applicant and his spouse have a child in common, confirmed by a birth certificate, the only child referred to by the applicant’s spouse in her affidavit and apparently the only son living with the applicant and his spouse. The assertion that there is a stepson is not supported by the record. The applicant’s son is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant’s spouse.

The record reflects that the applicant’s spouse’s son is nineteen years of age and there is no information concerning whether he is currently attending school or supporting documentation indicating that he has been admitted to a university. The record does not contain any information concerning whether the applicant’s spouse’s son is currently employed or still residing with the applicant and his spouse. Going on record without supporting documentary evidence generally is

not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 record indicates that in 2011, the applicant's spouse earned 22,534 dollars. There is no documentation or explanation of expenses or other possible asset. The record is insufficient to determine that the applicant's spouse would be unable to meet her financial obligations in the absence of the applicant.

Counsel for the applicant asserts that the applicant's spouse would suffer emotionally upon separation from the applicant, as she would be a single mother raising a child that is not her own. As noted, the record reflects that the applicant's spouse and her biological son would be separated from the applicant if he returned to Colombia. The applicant's spouse asserts that she and her son would be devastated if separated from the applicant. The applicant's spouse contends that she and the applicant have a very loving relationship and that his son had not been separated from him since the day he was born. It is noted that the affidavit from the applicant's spouse is dated December 12, [REDACTED] when her son was a minor, at the age of eleven. The record contains a letter from a physician stating that the applicant's spouse has a history of hypertension, hypothyroidism, glucose intolerance, anxiety and depression. The letter states that the applicant's spouse is experiencing stress due to the applicant's immigration status and she needs psychological support from her husband. The letter does not detail the level to which the medical and psychological conditions are affecting the spouse's life, the type of support needed by the applicant's spouse or the type of support provided by the applicant.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Colombia because she is a longtime resident of the United States, since 1998. Counsel further asserts that the applicant's spouse has been employed with the [REDACTED] School District since 2004 and would have to leave that behind if she returned to Colombia. The record contains an employment letter and tax documents indicating that the applicant's spouse is employed as a teacher's assistant and was hired on November 15, 2004.

Counsel asserts that the applicant's spouse would experience hardship upon relocation based upon the country conditions and violence against women in Colombia. The U.S. Department of State issued a travel warning for Colombia, dated November 14, 2014, stating that security in Colombia has improved significantly in recent years, though violence linked to narco-trafficking continues to affect some rural and urban areas. The applicant's spouse does not make any assertions concerning any hardship she would experience upon relocating to Colombia with the applicant. The record reflects that the applicant's spouse is a native of Colombia and her mother currently resides in [REDACTED] Colombia. The record does not contain any information concerning any other familial ties the applicant's spouse retains in Colombia. There is insufficient evidence in the

record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if he relocated to Colombia.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his 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 determining whether the applicant 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. Accordingly, the prior AAO decision is affirmed.

**ORDER:** The motion is granted and the prior AAO decision dismissing the appeal is affirmed.