



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 18 2015**

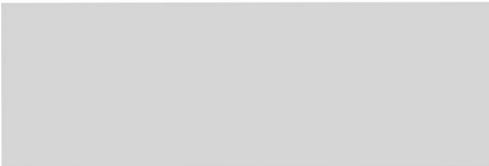
Office: NORFOLK

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, Norfolk, Virginia, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 an immigration benefit through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse and mother.

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. *Decision of the Field Office Director*, dated June 27, 2014.

On appeal, the applicant asserts that her spouse and mother would suffer extreme hardship if the waiver application is denied and submits additional statements, in addition to information regarding her mother's medical condition.

The record includes, but is not limited to, the following documentation: statements by the applicant and the applicant's spouse, financial documentation, employment documents for the applicant's spouse, identity documents, medical documentation for the applicant's spouse and mother, background medical information, letters of reference, and background country condition 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.

The record indicates that the applicant applied for a U.S. passport in February 1988 falsely claiming to be a U.S. citizen, presenting a fraudulent birth certificate indicating that she was born in the United States. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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

The Attorney General [now Secretary of the Department 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. . . .

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. The applicant's U.S. citizen spouse and U.S. citizen mother are the only qualifying relatives 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) does consider a child's hardship a factor in determining 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-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 v. INS*, 138 F.3d 1292, 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 applicant contends that her spouse will suffer financial hardship if the waiver application is not approved. The record indicates that in 2013, the applicant’s spouse was employed as a security officer with an annual income of \$23,388.00, according to the Form I-864, Affidavit of Support Under Section 213A of the Act, filed in January 2013. The record further indicates that the applicant’s spouse received an associate’s degree in criminal justice on December 31, 2012, and has been applying for employment in the criminal justice sector. Financial documentation indicates that in August 2013, the applicant’s spouse had a loan totaling \$17,892.10, with monthly payments of \$288.10 from [REDACTED], a Stafford loan in grace status, and in 2009, he signed a residential lease for a home in [REDACTED] Virginia, with a monthly rental payment of \$1,100.00. The record also contains supporting financial documentation for the applicant’s spouse’s monthly expenses, including utility and cable bills and credit card payments. The applicant’s spouse contends that he needs the support of the applicant to meet the family’s daily expenses and pay back the student loans. However, as noted above, the applicant’s spouse has an annual income in excess of \$23,000 and, according to the record, he has no other dependents. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet his financial obligations in the applicant’s absence.

The applicant’s spouse contends that he will experience medical and psychological hardship if the applicant’s waiver application is not approved. The applicant’s spouse asserts that separation from his wife of ten years would cause him extreme hardship and depression and that he would worry about her health in Colombia. Medical documentation in the record dated July 2013 indicates that the applicant’s spouse was diagnosed with gastroesophageal reflux disease, environmental allergies, asthma, and left knee pain. There is no evidence in the record to indicate that the applicant’s spouse requires the support of the applicant to treat these medical conditions. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach

conclusions concerning the severity of a medical condition or the treatment needed. The July 2013 medical document further indicates that the applicant's spouse was given the diagnosis of depression with anxiety, was prescribed anti-depressant drugs, and was referred to psychiatry. However, the record contains no further detail about his psychiatric condition and any other treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The applicant has another qualifying relative, her mother, who arrived in the United States in 1996, and became a U.S. citizen in 2012. The record includes medical documentation for the applicant's mother, indicating that she suffers coronary disease. However, the record indicates that the applicant's mother resides in [REDACTED] New Jersey, and that the applicant has a sister who also lives in [REDACTED] New Jersey. The evidence in the record does not demonstrate that the applicant has ever served as her mother's primary caregiver, or that her mother is dependent upon her for physical, emotional or economic support such that she is unable to continue living under her current circumstances in her absence. The applicant contends that it is foreseeable that her mother's condition will deteriorate, and she will need support and financial assistance. However, there is no indication or evidence in the record that the applicant's sister would be unable to provide adequate support to their mother as necessary.

The documentation on the record indicates that the applicant's spouse and mother will suffer from some hardships if they are separated from the applicant. However, the record lacks sufficient evidence demonstrating that the hardships to the applicant's spouse and mother or other impacts of separation are in the aggregate above and beyond the hardships normally experienced, such that the applicant's husband and mother would experience extreme hardship if the waiver application is denied and they are separated from the applicant.

The applicant contends that her spouse will suffer hardship if he were to relocate to Colombia to be with her. The record indicates that the applicant's spouse was born in Morocco and has resided in the United States since 2001. There is no indication in the record that the applicant's spouse has ever been to Colombia, he has no family ties to Colombia, and he asserts that he is unfamiliar with the language and customs of that country. The applicant also states that her spouse will suffer financial hardship if he relocates to Colombia. The applicant's spouse received training in criminal justice in the United States and currently works as a safety and security officer. It is noted that the language barrier and his lack of transferrable skills would affect his ability to find meaningful employment in Colombia.

The applicant contends that her spouse is a Muslim, and there is a relatively small number of practicing Muslims in Colombia. The applicant further contends that her spouse would have difficulty finding adequate medical care in Colombia for his medical conditions.

The applicant's mother asserts that she is suffering from strong depression and is very sick with a heart condition. The record contains a letter from the applicant's mother's physician stating that she has a history of coronary artery disease status post coronary intervention and has been under his care. The physician's letter also states that the applicant's mother is undergoing a cardiac workup and scheduled for her next coronary intervention and stent placement. Although the applicant's

mother is originally from Colombia, and is familiar with the language and customs of that country, she has resided in the United States since 1996 and is now a U.S. citizen. As noted, the record reflects that the applicant's mother's has familial ties to the United States, as the applicant's sister resides in the same city and state as their mother. The record also establishes that the applicant's mother would interrupt the continuity of her cardiovascular care upon relocation to Colombia.

Based on the evidence on the record, the applicant has established that her spouse and her mother would suffer hardship beyond the common results of removal if they were to relocate to Colombia to reside with the applicant.

Although the applicant has demonstrated that her qualifying relatives would experience extreme hardship if they 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 relatives in this case.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she 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.

ORDER: The appeal is dismissed.