



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-D-S-M-

DATE: NOV. 12, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Colombia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark Field Office, denied the application. A subsequent appeal was dismissed by this office. The matter is now before us on motion to reopen and motion to reconsider. The motions will be denied.

The Applicant 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 procuring a nonimmigrant visa and subsequent admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility to remain in the United States.

In a decision dated September 16, 2013, the Director found that the Applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The waiver application was denied accordingly.

In a decision dated April 16, 2014, we determined that the record did not contain sufficient evidence to show that the hardships faced by the Applicant's spouse would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The appeal was dismissed accordingly.

On motion, filed on May 4, 2014, and received by us on May 20, 2015, the Applicant contends that we erred by not considering hardship factors in the aggregate. With the appeal the Applicant submits an affidavit from her spouse, a rental agreement signed in 2010, and copies of previously-submitted material. 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.

The record reflects that when applying for a B-2 nonimmigrant visa in 2005, the Applicant submitted fraudulent documentation to establish her employment. Based on the fraudulent information the Applicant was issued a B-2 visa and subsequently entered the United States in 2006. The Applicant is thus admissible pursuant to section 212(a)(6)(C)(i) of the Act. This finding is not contested on motion.

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-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. *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 noted above, on appeal we determined that the record did not contain sufficient evidence to show that the hardships faced by the Applicant’s spouse would rise to the level of extreme hardship. We found that the record did not contain a statement from the Applicant or her spouse about the exact nature of the spouse’s emotional hardships and how such emotional hardships were outside the ordinary consequences of removal. Nor did the submitted psychological evaluation establish that the hardships the Applicant’s spouse would experience were beyond the hardships normally associated when a spouse is found to be inadmissible. We further determined that the record contained no explanation as to why the spouse was financially dependent on the Applicant as there was no indication in the record that the spouse was unable to work. Moreover, we noted that no documentation had been submitted establishing the spouse’s current expenses, assets, and liabilities, or his overall financial situation, to establish that without the Applicant’s physical presence in the United States her spouse would experience financial hardship.

In regard to relocating abroad to reside with the Applicant, we determined when we dismissed the appeal that reports submitted to the record described generalized country conditions and the record did not indicate how they specifically affected the Applicant's spouse. We found that the record contained no statement from the Applicant or her spouse about the spouse's relations with his children in the United States, and that documentation concerning potential hardship if the Applicant's spouse were to relocate abroad was general in nature.

On motion the Applicant asserts that factors must be considered in the aggregate and refers to submitted evidence including the 2012 psychological evaluation for her spouse and financial documentation for 2011 and 2012. The Applicant contends that the psychological report clearly opines that if she has to leave the United States her spouse would face unusual hardship. The Applicant states that the financial impact of her removal was demonstrated by the fact that her spouse has been economically dependent on her since 2011 and that only she is working and paying bills. Thus, if the Applicant were removed, she contends her spouse would be responsible for all the bills, but he has been unable to work due to his depression. In the spouse's affidavit submitted on motion, dated May 15, 2014, he states that he cannot live without the Applicant and that he was diagnosed with depression and anxiety after learning that the Applicant may not be able to stay in the United States. He asserts that his health has declined, he sleeps poorly, has gained weight, cries daily, and feels like the world is ending. He states that debilitating depression makes him financially dependent on the Applicant as he is unable to work and depends on the Applicant to pay the household bills.

The affidavit from the Applicant's spouse and the psychological evaluation previously submitted do not establish that the hardships the Applicant's spouse would experience are outside the ordinary consequences of removal. While we acknowledge the contentions in the record that the Applicant's spouse will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life. Further, the questions we raised when we dismissed the appeal with respect to the Applicant's spouse's inability to work and support himself have not been addressed on motion. Although the Applicant and her spouse contend that the spouse is financially reliant on the Applicant and is unable to work, the record contains no supporting documentary evidence as to why the spouse is financially dependent on the Applicant and how he is unable to work. Nor has any documentation been submitted establishing the spouse's current expenses or overall financial situation. 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)).

We recognize that the Applicant's spouse will endure some hardship as a result of long-term separation from the Applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

We also find that on motion, the Applicant has not established that her spouse would experience extreme hardship if he were to relocate to Colombia. The Applicant contends that the unemployment rate in Colombia demonstrates that finding employment would be nearly impossible. The Applicant's spouse asserts that he cannot survive economically in Colombia, where he has no family and finding a job would be impossible. On motion the Applicant has not submitted documentation in support of this assertion, and the documentation previously submitted was general in nature and did not specifically establish that the Applicant's spouse would experience extreme hardship were he to relocate to Colombia to reside with the Applicant due to her inadmissibility. Further, with respect to the Applicant's spouse contention that he has two children in the United States that he cannot live without, making it impossible for him to go to Colombia, on motion we reiterate our previous finding when we dismissed the appeal that no supporting documentation has been provided establishing the relationship between the Applicant's spouse and his children to support the contention that separation from them by relocating to Colombia would cause him extreme hardship. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship.

On motion, the record does not support a finding that the Applicant's spouse will face extreme hardship if the Applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-D-S-M-*, ID# 14453 (AAO Nov. 12, 2015)