



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

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

MATTER OF L-I-D-

DATE: SEPT. 28, 2015

APPEAL OF NEWARK NEW JERSEY FIELD 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 Director of the Newark, New Jersey Field Office denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant 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 admission into the country by fraud or the willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse. She filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), under section 212(i) of the Act in order to reside in the United States with her spouse and children.

The Director determined that the Applicant did not establish that extreme hardship would be imposed on her spouse if he remained in the United States, or if he relocated with the Applicant to Colombia. The Form I-601 was denied accordingly. *See Decision of the Director*, dated November 19, 2014.

On appeal, the Applicant asserts that the Director did not accord proper weight to the evidence in the record, and that the evidence demonstrates that her spouse will experience extreme emotional, financial, and physical hardship if she is denied admission into the country and he either remains in the United States, or relocates with her to Colombia. The Applicant asserts that the evidence also establishes that a favorable exercise of discretion is merited in her case. In support of these assertions, the record includes, but is not limited to: affidavits from the Applicant and her spouse, financial and employment evidence, psychological evaluation and medical evidence, and country conditions information. The Applicant also submits documents establishing relationships and identity, family photographs, school documents for her children, and evidence related to good moral character.

The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states that:

(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 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 on April 26, 1996, the Applicant presented a photo-altered Venezuelan passport belonging to someone else in order to gain admission into the United States. Because the evidence demonstrates that the Applicant gained admission into the United States through misrepresentation of a material fact, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Moreover, once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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 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.

The Applicant's qualifying relative is her U.S. citizen spouse. To establish that her spouse would experience extreme hardship if she were denied admission and he remained in the United States, the Applicant submits affidavits, psychological evaluation, medical evidence, and financial documentation.

The record also contains references to hardship that the Applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's

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children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the Applicant's spouse.

The Applicant states in an affidavit dated January 9, 2015, that her spouse recently became injured and unable to work and that he was "let go" shortly after he returned to work. She states that her spouse now depends on her to financially support their family. She states that prior to her spouse's injury, he worked long hours as a truck driver and that he depended on her to care for their [redacted] - and [redacted]-year-old children and to take care of their home. She indicates that because she has been the primary caretaker, it would be difficult for her spouse to care for the children on his own if they remained in the United States with him. She states that it would also be difficult for her spouse to not see their children grow up if she took them to Colombia and he remained here. In addition, the Applicant states that her spouse is on medication for insomnia and high blood pressure, they must pay his medical costs "out of pocket" because they currently have no health insurance, his conditions have worsened due to her immigration situation, and her spouse's medical conditions would worsen if she departed the United States and he were left to work and care for their children on his own.

The Applicant's spouse states in a January 9, 2015, affidavit that he and the applicant have been together for 12 years and that he depends on her tremendously. He explains that he was unable to work between August and November 2014 due to an injury, but before that he was the sole economic provider for their family, he worked 11-12 hours a day, and he depended on the Applicant to care for their children. A letter dated December 2013 from the spouse's employer, a lumber company, indicated that he worked an average of 55 hours per week as a driver. The Applicant's spouse states that the Applicant began working as a waitress to supplement his worker's compensation income, and the family currently depends on the Applicant's income. In addition, he states that he does not believe that the Applicant will be able to find work in Colombia due to high unemployment and he worries that he will be unable to support the Applicant in Colombia. The Applicant's spouse discusses his inability to meet the family's current financial obligations on his own and also indicates that he will be unable to pay for child care costs if he begins working again. The Applicant's spouse states that he "would be lost" without the Applicant's companionship, and he indicates that he worries about the Applicant's safety in Colombia and worries that she will have nowhere to go there. In addition, the Applicant's spouse states that he suffers from anxiety and that he takes medication for insomnia and high blood pressure.

The record contains a psychoemotional & family dynamics assessment prepared by a certified clinical psychopathologist reflecting that the applicant's spouse was interviewed with his family in August and September 2013 and that a clinical update was prepared on December 11, 2013. The therapist noted that the Applicant's spouse complained of anxious-depressive thoughts and feelings and symptoms of stress due to uncertainties regarding the applicant's immigration situation in this country. In addition, the therapist stressed the importance of each parent's presence in a child's life and indicated that the suffering of the Applicant's children in the absence of a parent and primary caregiver would affect the Applicant's spouse's emotional wellbeing and aggravate his anxious-

depressive symptoms. Based on the interviews and administered tests, the therapist diagnosed the Applicant's spouse with mixed anxiety and depressed mood due to "problems related to the interaction with the legal system as immigration petitioner" and "potential distancing from wife and main supportive figure."

Medical evidence contained in the record confirms that the Applicant's spouse was injured in August 2014 and was unable to work until the beginning of November 2014. A December 17, 2014, medical letter corroborates further that the Applicant's spouse suffers from hypertension, "insomnia due to mental disorder," anxiety disorder," and vitamin B12 deficiency.

Financial evidence includes the applicant's and her spouse's 2012 and 2013 Form 1040, U.S. Individual Income Tax Returns; bank account documentation; and the couple's apartment lease, credit card, utility bills, and auto insurance bill information. In addition, a December 4, 2014, letter from the Applicant's employer confirms that she has worked at a restaurant since May 2014.

Country conditions information submitted by the Applicant reflects that although the security situation in Colombia has improved in recent years and there are no reports of U.S. citizens being specifically targeted, kidnapping remains a threat in Colombia, violent crime is a significant concern, and many areas can still be dangerous due to the presence of terrorists and narco-traffickers.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility of a family member if he remains in the United States separated from the Applicant. The evidence demonstrates that the Applicant's spouse's medical conditions include hypertension, insomnia, and mixed anxiety and depressed mood. The evidence also demonstrates that the Applicant's spouse would experience emotional hardship due to separation and concerns for the Applicant's safety and financial welfare if she returned to Colombia and due to concerns about the safety and wellbeing of their children if they returned to Colombia with the Applicant. In addition, the evidence establishes that the Applicant's spouse would experience hardship if their children remained in the United States as a result of their emotional hardship resulting from separation from their mother. Further, the evidence demonstrates that the Applicant's spouse has worked for several years as a truck driver, and he would experience financial hardship due to the additional cost of child care while he works. Considered in the aggregate, the Applicant has demonstrated that the cumulative effect of the hardships that her spouse would experience if he remained in the United States rises to the level of extreme hardship.

The Applicant has also demonstrated that her spouse would experience hardship that would rise above the common results of removal or inadmissibility to the level of extreme hardship, if he relocated with the Applicant to Colombia.

The Applicant's spouse states in his January 9, 2015, affidavit that he is originally from the Dominican Republic, he has never been to Colombia, he has no ties there, and he does not believe he will be able to find a job in Colombia. He states that due to high unemployment, he also does not think that the Applicant will be able to find work in Colombia, and he indicates that although the

Applicant's brother lives there, he is unemployed and unable to help them. The Applicant's spouse states that without employment in Colombia, he would be unable to pay for his and the family's medical costs. In addition, the Applicant's spouse states that his U.S. citizen children get a quality education in the United States, and he fears they would not be able to follow a school curriculum in Spanish and would fall behind and fail out of school in Colombia. Further, he fears that it would be dangerous for his family to live in Colombia due to high crime and violence in the country. The Applicant's spouse also states that he would be separated from his 87-year-old mother and four siblings who live in the United States, and that he would not be able to afford to visit them.

The Applicant expresses concern, in her affidavit dated January 9, 2015, that there are high levels of unemployment in Colombia and that her spouse would not have access to medical treatment because they would be unable to afford to pay for it. The Applicant also expresses concern about high levels of violence in Colombia, and a fear that her family will be targeted by criminals because they are American and perceived as wealthy.

The December 2014, medical letter corroborates that the Applicant's spouse suffers from hypertension, insomnia, anxiety disorder and vitamin B12 deficiency.

In addition, the country conditions information submitted by the Applicant reflects that many health care providers require payment prior to treatment in Colombia, and that those without financial resources "may be relegated to seeking treatment in public hospitals where the standard of care is below U.S. standards." *See DOS Colombia Travel Warning*, dated October 11, 2013. The country conditions evidence also reflects that kidnapping remains a threat in Colombia; violent crime is a significant concern; and small towns, rural areas, and some urban areas can still be dangerous due to the presence of terrorists and narco-traffickers.

Overall, considering the evidence in the aggregate, the Applicant has demonstrated that her spouse would experience hardships in Colombia that would rise above the common results of removal or inadmissibility to the level of extreme hardship, if he relocated with the Applicant. The Applicant's spouse is not from Colombia, he has lived in the United States for many years, his children have never lived or gone to school outside of the United States, and he would be separated from his elderly mother and his siblings in the United States. In addition, country conditions evidence corroborates the Applicant's spouse's concerns regarding safety conditions and the availability of quality healthcare in Colombia. Considering the factors of this case cumulatively, the Applicant has demonstrated that her spouse would experience hardship that would rise above the common results of removal or inadmissibility to the level of extreme hardship, if he relocated to Colombia.

In addition, the Applicant has established that she merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(a)(6)(C)(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility ground at issue, the presence of additional

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significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the 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 alien began residency at a young age), evidence of hardship to the alien and his family if s/he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in 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). See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the Applicant's use of a passport that was not hers to gain admission into the United States in 1996 and her subsequent accrual of unlawful presence in the country. The favorable factors are the hardship that the Applicant's U.S. citizen spouse and children would face if the Applicant is denied admission into the country, letters attesting to the Applicant's good character, and her lack of a criminal record. Upon review, we find that although the applicant's immigration violations are serious, the positive factors in this case outweigh the negative 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. See section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of L-I-D-*, ID# 10966 (AAO Sept. 28, 2015)