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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: MEXICO CITY (PANAMA CITY)

Date: **MAR 17 2010**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant was further found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B), 1182(i), in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated June 4, 2007.

On appeal, the applicant's wife asserts that she will suffer extreme hardship should the applicant be prohibited from residing in the United States, in part due to economic challenges, the death of her father, and the need to assist her mother. *Statement from the Applicant's Wife*, dated September 3, 2009.

The record contains statements from the applicant, the applicant's wife, the applicant's mother-in-law, reverends for the applicant's wife and sister-in-law, and other relatives of the applicant's wife; documentation regarding the applicant's father-in-law's death; a letter from a physician who treats the applicant's mother-in-law; an article regarding the death of the applicant's friend in Colombia and another report on conditions there; a medical document regarding the applicant's father-in-law's mental health prior to his death; a vocational training certificate for the applicant; copies of bills for the applicant and his wife; a psychological evaluation of the applicant's wife; copies of birth records for the applicant and his wife; a marriage document for the applicant and his wife; copies of the applicant's Form I-94, Departure Record, and C1/D visa; documentation in connection with the applicant's prior application for asylum in the United States and proceedings in Immigration Court; information regarding the applicant's entry to the United States in C-1 status, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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)(1) of the Act provides, in pertinent part, 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 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[.]

The record reflects that on April 8, 1999 the United States Consulate in Bogota, Colombia issued a C1/D visa to the applicant based on his representation that he worked for International Shipping Partners. On April 14, 1999 the applicant used the visa to enter the United States in C-1 status, with authorization to remain until May 12, 1999.

On October 24, 2003, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, with the Miami Asylum Office. The applicant claimed that he had departed the United States after entering in C-1 status, and that he subsequently entered without inspection at Yuma, Arizona on February 2, 2003. However, upon being interviewed on December 9, 2003, an asylum officer found that the applicant's claim to have departed the United States and reentered without

inspection was not credible. Accordingly, the asylum officer determined that the applicant did not establish that he filed his Form I-589 application within one year of his arrival, and thus he was not eligible to affirmatively apply for asylum before the Miami Asylum Office. On December 16, 2003, the asylum officer referred the applicant's case to an Immigration Judge for further proceedings.

The applicant married his U.S. citizen wife on April 10, 2004. On September 30, 2004, the applicant's wife filed a Form I-130 relative petition on his behalf. The petition was approved on March 15, 2005. The applicant withdrew his request for asylum before an Immigration Judge, and on September 11, 2005 he was granted voluntary departure until December 10, 2005. The applicant departed the United States on or about December 7, 2005.

The applicant applied for an immigrant visa with the United States Consulate in Bogota, Colombia. A consular officer determined that, based on the applicant's claim to have entered the United States without inspection in February 2003, he accrued unlawful presence from February 2003 until his departure in December 2005. Thus, the applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

United States Citizenship and Immigration Services records further show that an investigation was conducted regarding the applicant's C1/D visa, and it was discovered that he never worked for International Shipping Partners as claimed. Thus, it was determined that the applicant obtained his C1/D visa by fraud and making a willful misrepresentation regarding his employment. The record shows that the consular officer determined that the applicant willfully concealed his entry to the United States using the C1/D visa, as he represented that his first entry was without inspection in 2003. Accordingly, he was deemed inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. It is noted that the record shows that the consular officer found that the applicant did not provide sufficient evidence to support that he in fact returned to Colombia in 2000 and reentered the United States without inspection in 2003. An asylum officer referred the applicant's asylum application to an Immigration Judge based on a finding that the applicant's claimed entry without inspection in 2003 was not credible, and that his true date of entry was on April 14, 1999 when he entered in C-1 status. The consular officer noted that the applicant claimed he lost his passport and Colombian officials have no record of his return to the country after he entered the United States on April 14, 1999, and the applicant has not provided any documentary evidence to support that he departed the United States in 2000 and reentered in 2003. Accordingly, the record shows by a preponderance of the evidence that the applicant began accruing unlawful presence on April 14, 1999, the date he entered by fraud and misrepresentation. However, this period of unlawful presence ended as of the date he filed a bona fide application for asylum, on October 24, 2003.¹

¹ As the applicant withdrew his application for asylum before an Immigration Judge, the merits of his claims were not reached. The record does not show that his request for asylum was frivolous. Thus, the AAO treats his Form I-589 application for asylum as bona fide.

Based on the foregoing, the applicant accrued over four years of unlawful presence in the United States. As he now seeks reentry as an immigrant, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and he requires a waiver under section 212(a)(9)(B)(v) of the Act.

On appeal, the applicant asserts that, as the U.S. Consulate in Bogota issued a C1/D visa to him, "International Shipping Partners must have presented appropriate documentation such as the signed contract and available position." *Statement from the Applicant on Form I-290B*, dated July 1, 2007. The applicant indicates that when he arrived in the United States he called the company and they reported that they had "no paperwork" for him and that his contact didn't work for them. *Id.* at 2. The applicant claims that he was informed by International Shipping Partners that records of his hiring should be held by a subcontractor who hired him. *Statement from the Applicant on Appeal*, section II(A), undated. He explains that he made efforts to contact the company but "the company left no traces behind of its existence." *Id.* He provides a copy of his C1/D visa, and he contends that it serves as evidence that he did not commit fraud. *Id.*

Upon review, the applicant has not established that he was erroneously deemed inadmissible for committing fraud and misrepresentation. The applicant has not provided sufficient evidence to show that his C1/D visa was lawfully obtained. He asserts that he attempted to contact the subcontracting company that hired him without success. However, the applicant has not named the company or described his efforts to contact them. Nor has the applicant provided detailed information about his prior contact with the company, such as information about how he became involved with them, the nature of his offered position and how he was chosen, or whether he paid funds for the position. The applicant asserts that issuance of his C1/D visa shows that proper documentation must have been presented. However, the existence of a visa does not serve as evidence that it was obtained lawfully.

Based on the foregoing, the applicant has not overcome the finding that he obtained his C1/D visa by fraud and misrepresentation, and that he then used the visa to deceive U.S. immigration officers to gain admission to the United States. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa and admission into the United States by fraud or willful misrepresentation, and he requires a waiver of inadmissibility under section 212(i) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent first upon a showing that barring the applicant's admission will impose an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) or 212(i) of the Act. 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*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, the applicant's wife asserts that she will suffer extreme hardship should the applicant be prohibited from residing in the United States. *Statement from the Applicant's Wife*, dated September 3, 2009. The applicant's wife explains that her father died in February 2009 and that her mother is in need of constant assistance with her health and finances. *Id.* at 1. She states that her mother underwent surgery due to a lump in her breast, from which she is still recovering. *Id.* The applicant's wife indicates that her mother receives less than half of her father's pension since her father's death. *Id.* She reports that she, her mother, and her sister all work second jobs to meet their needs. *Id.* The applicant's wife provides that her mother requires someone to take her to doctor's appointments and contribute income so she does not have to work two jobs. *Id.* She notes that her younger sister was working on a Masters degree but that she had to postpone her studies to begin a second job to assist their mother with mortgage and funeral costs. *Id.*

The applicant's wife states that she is an attorney and she runs a law office, but that she must leave the office at 5pm or earlier to begin her second job which lasts as late as 11:00pm. *Id.*

The applicant's wife contends that, should she relocate to Colombia, her life would be in danger and she would be deprived of basic needs. *Id.* at 2.

The applicant's wife expresses that she loves the applicant, and that she has endured emotional hardship due to their separation. *Id.*

The applicant's mother-in-law expresses dismay regarding the length of time required to process the applicant's application for a waiver, and she states that the applicant was unable to see his father-in-law immediately prior to his death. *Statement from the Applicant's Mother-in-law*, submitted April 2, 2009. She asserts that she receives \$1,400 per month from her husband's pension now that her husband is deceased. *Id.* at 2. She explains that the applicant's wife resides with her, and that it would be helpful for the applicant to rejoin their household so he can contribute financially. *Id.* She states that she needs the applicant to take over household chores that she is unable to perform. *Id.*

The applicant's mother-in-law states that her family is in extreme emotional distress, and that she has lost control of her diabetes and other health problems due to her current strain. *Id.*

The applicant's mother-in-law provides that the applicant's wife was diagnosed with depression in 2007, and that she is suffering without the applicant's support. *Id.*

The applicant states that his wife's depression has become worse over time, and that she is dealing with the loss of her father. *Supplemental Statement from the Applicant*, undated. He indicates that he used to reside in a household in the United States with his wife and mother-in-law, and that he fears they will lose the home where they have lived for over 20 years if he is unable to return and contribute financially. *Id.* at 1.

The applicant indicates that the father-in-law of his best friend, [REDACTED] was murdered along with a college student in Colombia. *Appeal Statement from the Applicant*, dated July 25, 2007. He notes that [REDACTED] resided approximately 10 minutes away from his home, and he used to visit [REDACTED]'s residence and spend time with him and his family members in the city. *Id.* at 1. He states that this murder serves as evidence that Colombia is a dangerous country. *Id.* The applicant provided an article that reports the murder of [REDACTED] yet it indicates that the identity of the perpetrators is unknown. *News Article*, dated July 28, 2007.

The applicant asserts that his wife is enduring economic hardship in his absence. *Statement from the Applicant on Appeal*, section F. He lists his wife's bills, and he asserts that she is unable to make sufficient income to meet her needs. *Id.* He notes that his wife's parents house her, thus saving her the costs of rent and utilities, and they purchased a car for her and pay for her insurance.² *Id.*

The applicant explains that he resides with his mother in a poor neighborhood in Colombia, and that his wife visited him there. *Prior Statement from the Applicant*, dated July 3, 2007. He states that the applicant speaks Spanish, and that she has been helping him with English. *Id.* at 2. The applicant explains that conditions in Colombia are poor, and that a man was murdered approximately 100 feet from where he and his wife were sitting in a car. *Id.* He states that employment opportunities are limited in Colombia, and that he has had difficulty securing adequate work. *Id.* He adds that his wife would be unable to utilize her U.S. law degree in Colombia, hindering her ability to repay her \$116,000 educational debt. *Id.* He explains that his wife would have difficulty obtaining needed mental health services in Colombia. *Id.* at 3.

The applicant submitted a psychiatric report for his wife, conducted by [REDACTED] in Puerto Rico. [REDACTED] stated that the applicant's wife visited the applicant in Colombia on three occasions for four to five days each time. *Psychiatric Report for the Applicant's Wife*, dated June 28, 2007. [REDACTED] indicated that the applicant's wife suffers from Major Depressive Disorder, and stated that she suffers from anxiety, sleep loss, loss of concentration, and an inability to work. *Id.* at 2.

The applicant provides a letter from his mother-in-law's physician, [REDACTED]. [REDACTED] states that the applicant's mother-in-law has been his patient since July 1999, and she has a history of endometrial cancer, hypertension, diabetes, asthma, arthritis, and dyslipidemia. *Letter from [REDACTED]*, dated March 10, 2009. [REDACTED] indicates that the applicant's mother-in-law is "followed every four months." *Id.* at 1.

The applicant submits a letter from [REDACTED] and [REDACTED] in which they attest that the applicant's wife has sought their counsel due to depression, and they laud the applicant's good character. *Letter from [REDACTED] and [REDACTED]*, dated June 22, 2007. The applicant provides a letter from a Sunday School

² The applicant issued this statement prior to the death of his father-in-law and the resulting change in his mother-in-law's benefits from his father-in-law's pension.

Superintendent who states that she has observed the applicant's wife's emotional hardship due to separation from the applicant. *Letter from Sunday School Superintendent*, dated June 20, 2007.

The applicant provides letters from relatives of his wife who attest that his wife is suffering emotional hardship due to separation from him, and that he possesses good character. *Letters from Applicant's Wife's Relatives*, dated June 23 and July 1, 2007. The applicant's wife's uncle noted that the applicant's wife, mother-in-law, and sister-in-law traveled to Puerto Rico June 25 to 28, 2007 so that the applicant's wife could "relax and get herself together." *Letter from the Applicant's Wife's Uncle*, dated July 1, 2007.

The applicant's sister-in-law lauds the applicant's good character. *Statement from the Applicant's Sister-in-law*, dated June 30, 2007. She explains that the applicant's absence is causing the applicant's wife to experience serious emotional hardship. *Id.* at 2. She states that she works with the applicant's wife in her office, but that the applicant's wife has been unable to pay her. *Id.*

The applicant submits a letter from his sister-in-law's reverend who notes that the applicant's sister-in-law is encountering difficulty due to the applicant's absence. *Letter from* [REDACTED] undated.

Upon review, the applicant has shown that his wife will experience extreme hardship should she relocate to Colombia. The AAO takes notice that Colombia continues to experience problems, including governmental human rights abuses, active arbitrary arrests, an inefficient judiciary subject to intimidation, harassment of human rights groups, violence against women including rape, societal discrimination against women, and serious harms committed by guerilla groups including the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). *U.S. Department of State 2008 Human Rights Reports: Colombia*, dated February 25, 2009. On November 10, 2009, the U.S. Department of State issued a travel advisory for Americans traveling to Colombia, warning that "there has been an increase in violent crime, including kidnapping and homicide, in many of the major cities. Small towns and rural areas of Colombia can still be extremely dangerous due to the presence of narco-terrorists. Common crime also remains a significant problem in many urban and rural areas." *U.S. Department of State Travel Advisory: Colombia*, dated November 10, 2009. The applicant reported that his wife has visited him in Colombia, but that the father-in-law of his friend was murdered, and another individual was murdered nearby when he and his wife were in a car.

Based on the foregoing, it is evident that the applicant's wife would face serious emotional hardship should she relocate to Colombia due to security concerns.

The applicant's wife would face other hardships should she relocate to Colombia, including separation from her mother and sister with whom she is close. She has expressed a desire to continue to assist her mother, and she would have difficulty continuing to do so from Colombia. She would face detriment to her career, as she would have fewer opportunities to utilize her U.S. law degree. She would face economic challenges due to the expenses of relocating, the loss of her current income, and the need to repay her educational debt.

Considering all elements of hardship to the applicant's wife in aggregate, should she relocate to Colombia, she would suffer extreme hardship.

The applicant has also shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant has presented evidence that his wife is enduring significant emotional hardship. The record shows that his wife is facing numerous psychological stressors, including a lengthy separation from her spouse, the recent death of her father with whom she resided and shared a close relationship, the need to assist her mother who suffers from health conditions, and challenges with her attempt to operate her legal practice. Given present conditions in Colombia as discussed above, it is evident that the applicant's wife would experience additional psychological difficulty due to concern for the applicant's well-being in Colombia, and risks to her safety should she continue to visit him there. The record shows that the applicant's wife sought counseling from reverends on multiple occasions due to depression. She was evaluated by a doctor in Puerto Rico who diagnosed her with major depressive disorder.

Considering all elements of emotional hardship to the applicant's wife in aggregate, the applicant's wife is facing emotional challenges that go beyond those that are commonly experienced when spouses reside apart due to inadmissibility. The AAO particularly finds that coping with the death of a parent while lacking the presence and support of one's spouse to be an unusual circumstance. Thus, the applicant's wife's emotional difficulty rises to the level of extreme hardship.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will experience extreme hardship should she remain in the United States without him. Thus, the applicant has established that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States by fraud and misrepresentation. The record supports that the applicant misrepresented the date and nature of his first entry to the United States when he applied for an immigrant visa before a consular officer. The applicant remained in the United States for a lengthy period without a legal immigration status.

The positive factors in this case include:

The applicant's wife would experience extreme hardship should the applicant be prohibited from residing in the United States; the applicant has gained vocational training, shown a propensity to work in the United States, and contributed to his household; the applicant has engaged with his local community in the United States through religious activities; the applicant has cultivated a strong relationship with his wife's family, and; the applicant's mother-in-law and sister-in-law would endure hardship should the applicant remain in Colombia.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met his burden that he is eligible for a waiver and he merits approval of his application.

ORDER: The appeal is sustained.