identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: GARDEN CITY, NY Date: FEB 18 2011

IN RE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Israel who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for seeking to adjust his status to lawful permanent resident by submitting fraudulent documents. He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service January 13, 2010.

On appeal, counsel for the applicant asserts the applicant did not knowingly commit any misrepresentation and that the District Director's decision failed to properly consider submitted evidence establishing extreme hardship. *Form I-290B*, received February 11, 2010.

The record contains documents filed in relation to the applicant's previous Form I-485, his Form I-130 and his current Form I-485. With regard to the his Form I-601, the record contains, but is not limited to, the following evidence: a brief from counsel; statements from the applicant's spouse; a statement from the applicant; bank statements, tax returns and financial documents for the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, 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.

The record indicates that the applicant submitted false documents, to wit, a false birth certificate for his father and a false I-797 certifying that relationship, in an attempt to adjust his status to lawful permanent resident in 2003.

Counsel asserts that the applicant is not inadmissible because he did not wilfully misrepresent any material fact in filing his previous adjustment application. *Brief in support of appeal*, received March 9, 2010. The applicant asserts that the inconsistencies between his first Form I-485 and his second Form I-485 were due to the fact that he blindly signed something an attorney gave him. This assertion is not sufficient. When an applicant signs a petition or submits evidence he certifies under

penalty of perjury that the application or petition, and all evidence submitted with it is true and correct. 8 C.F.R. § 103.2(a)(2). As such, simply asserting ignorance of inconsistencies is not sufficient to establish that the applicant did not misrepresent material facts. Neither applicant nor counsel have submitted any evidence in support of their assertions. The applicant has not asserted or shown he lacks English reading comprehension that is sufficicent to perceive any inconsistencies or errors in the basic information contained in his Form I-485 and other documents listing his familial relationships.

The record contains copies of the Form I-485 signed by the applicant, the false birth certificate for his father and the false I-797 form certifying the relationship submitted with his 2003 Form I-485. Other evidence in the record contradicts the applicant's assertion as well. In conjunction with his Form I-485 he submitted an addendum stating that his mother previously filed an I-130 and I-485 on his behalf. This would only be possible if his mother were a U.S. citizen or Lawful Permanent Resident of the United States. On the Form G-325 biographical questionnaire signed by the applicant and submitted with his 2003 Form I-485 he lists his father as a U.S. citizen, his mother as an Israeli citizen, and indicates that they both resided in New York city at the time. Yet, on the applicant's subsequent Form I-485 he submitted a G-325 biographical questionnaire listing both of his parents as Israeli citizens and both as living in Israel. The applicant's assertions are not persuasive. As such, he is inadmissible under section 212(a)(6)(C)(i).

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

> (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.

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 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact

that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

With regard to establishing extreme hardship, the AAO will first examine hardship upon relocation. Counsel asserts that the applicant's spouse has family and community ties to New York which would be severed upon relocation. *Brief in Support of Appeal*, received March 9, 2010. He explains that she is dependent on her employment at the Social Security Administration and that she has been continuing her education, but would have to learn Hebrew before she could continue her education in Israel. He states that she would have difficulty adapting to the culture in Israel and loss of her New York network of friends and support. In a letter dated September 15, 2009, the applicant's spouse asserts she would suffer financial hardship because she feels the "market is much worse in Israel."

An examination of the record reveals little evidence to support counsel's assertions. There are no country conditions materials or other evidence that the applicant's spouse would not be able to find employment or attend educational classes in English if she relocated to Israel. While the AAO recognizes the hardship impact of severing family and community ties in the United States, and having to adjust to a life in a different country, these are common impacts of relocation and the record fails to distinguish these impacts from the common impacts of relocation on the spouses of inadmissible aliens. Even when these hardships are considered in the aggregate, there is insufficient evidence that they are distinct from the common impacts on relatives who relocate with inadmissible spouses, and as such they do not constitute extreme hardship.

With regard to hardship upon separation, counsel asserts that the applicant's spouse would experience emotional, financial, educational and health-related hardships due to the applicant's inadmissibility. He asserts that the applicant's spouse has been diagnosed with Major Depression related to a miscarriage and the stress of the applicant's inadmissibility and refers to a "handwritten" note in the record. The applicant's spouse states "[t]he psychologist thinks that I am suffering from Major Depression" and asserts that she experiences fatigue, sleep disruptions and crying fits. *Statement of the applicant's spouse*, dated September 15, 2009. She also asserts that she experienced a miscarraige that has contributed to her emotional difficulty.

An examination of the record reveals that the applicant has not submitted any documentation from a mental health practitioner or other medical records substantiating her claim of being diagnosed with Major Depression. The record contains submissions from the applicant's Forms I-130, I-485, I-864 and I-601, as well as his appeal before the Board of Immigration Appeals, and there is no copy of

any document from a mental health practitioner or medical evidence that the applicant's spouse has a mental health condition or suffered a miscarriage. Without objective evidence that the applicant's spouse has been diagnosed with a mental health condition the AAO cannot determine that the emotional impact on her rises above the common emotional impacts experienced by relatives of inadmissible aliens.

Counsel states that the real estate market is down and that this would be comparable to what they would experience in Israel. This is not a clear articulation of financial hardship to the applicant's spouse. An employment verification printout contained in the record indicates that she earns $33,000 annually from her employment at the Social Security Administration and the applicant has not shown that she faces economic needs that cannot be met at this level of income. The record does not contain sufficient evidence to establish financial hardship to the applicant's spouse.

Counsel asserts that the applicant's spouse, who attends college classes part-time, would not be able to concentrate on her education if the applicant were removed. However, the applicant has not distinguished this fact from the common challenges faced by individuals who reside apart from a spouse due to inadmissibility.

Even when the hardship impacts asserted are considred in aggregate, there is insufficient evidence to distinguish them from the common impacts of separation, and thus they do not constitute extreme hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. As the applicant has failed to establish extreme hardship to a qualifying relative, no purpose would be served in evaluating whether he warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.