

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



U.S. Citizenship  
and Immigration  
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DATE: JUN 19 2012 Office: LOS ANGELES, CA [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in cursive ink that appears to read "Virginia Page" or "Virginia Payer".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Armenia 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated July 14, 2011.

On appeal, counsel asserts that the director erred in denying the applicant's waiver and failed to properly consider all evidence submitted. Counsel further asserts that the applicant demonstrated that his spouse would suffer extreme hardship if his waiver is not granted.

The evidence of record includes, but is not limited to: counsel's brief; a statement from the applicant's spouse; information on country conditions for Armenia; letters concerning the applicant's daughter from educational institutions; financial documents; and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching 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:

- (1) The [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.

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. 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).

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*, 138 F.3d at 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.

In the present case, the record indicates that on October 8, 1997, the applicant procured admission to the United States by presenting a fraudulent passport in the name of [REDACTED]. [REDACTED] The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.<sup>1</sup> The applicant does not contest his inadmissibility.

The applicant's qualifying relative is his spouse, who is a U.S. citizen. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant's spouse "cannot support herself, their three children, and her mother on her income as a small-business owner." Counsel states that the applicant's mother-in-law resides with them and they are her sole support. According to counsel, the applicant's spouse has no family ties to Armenia because "all her family has immigrated." Counsel also states that the 2010 State Department report on Human Rights Practices in Armenia

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<sup>1</sup> Evidence in the record indicates that the applicant was arrested in California on March 24, 2012, for petty theft. The record does not contain a final court disposition and therefore, the AAO will not address whether the applicant's arrest creates other inadmissibility issues under section 212(a)(2)(A) of the Act.

corroborates the applicant's spouse's claims regarding the financial and educational hardship she and their children would face if the applicant's waiver is not granted.

In her June 2010 letter, the applicant's spouse states that her parents and sisters live in the United States and relocating to Armenia would force her to abandon her close ties. She states that her mother lives with her and the applicant and depends on them financially and emotionally. She states that she would not be able to find employment in Armenia due to gender and age discrimination in the workforce there. She adds that relocating to Armenia will cause her "tremendous distress" because of the effect on their children; they do not speak Armenian, and during a visit in 2009 they felt "out of place" and became "very anxious." She also states that remaining in the United States without the applicant would be financially and emotionally difficult for her and their children because she would be unable to support their family on her own income. Their children attend private schools, and without the applicant's support she would not be able to afford their education. The applicant's spouse also states that she would experience financial hardship because she is "not capable of running" the applicant's business.

Evidence in the record reveals that the applicant's spouse has a floral business. Her individual federal income tax return indicates that her income as a store manager was \$40,403 in 2009. She filed her tax return as head of household and listed her three children as her dependents.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and she relocates to Armenia. In reaching this conclusion, we note that the applicant's spouse was granted refugee status, and therefore, either was persecuted in Armenia in the past or had a well-founded fear of future persecution on account of a protected ground. Although she has visited Armenia, she apparently stayed for a short time to assist her son with his immigration process. The AAO also notes that two children are no longer minors; their minor child, however, would experience hardship were she to relocate to Armenia with her parents and her hardship would also cause the applicant's spouse hardship. The AAO further notes that the applicant's spouse has stronger family ties in the United States than in Armenia.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she remains in the United States. Although the applicant's spouse claims that she would be unable to support her family without the applicant's income, the record fails to demonstrate the applicant's income, his financial contributions toward their household expenses and support for his mother-in-law. The record also lacks evidence demonstrating the family's total income and expenses. Furthermore, the record does not demonstrate the business income generated by the applicant's spouse's floral shop. The record also lacks evidence showing that the applicant's mother-in-law is financially dependent on them. The applicant's spouse listed only their children as her dependents on her income tax return, and the record contains no documentary evidence showing that she financially assists her mother. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting

documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(i) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she lived in the United States, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.