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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**



Date: APR 09 2013

Office: ST. PAUL, MN

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 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 in accordance with the instructions on 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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering her husband's medical conditions, his long-time employment, and the fact that he has never lived outside of the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on January 12, 2011; a copy of the birth certificate of the couple's U.S. citizen daughter; affidavits from a letter from physician and copies of medical records; letters from relatives; copies of tax returns, bills, and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Vietnam; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that the applicant misrepresented her marital status when she applied for a nonimmigrant visa application. Specifically, the applicant claimed she was married when she was already divorced from her ex-husband. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 this case, the applicant's husband, [REDACTED] states that he loves his wife very much and that they are currently expecting their first child. In addition, [REDACTED] states that he has high blood pressure, pre-diabetes, hyperlipidemia, hypertriglyceridemia, and abnormal bilirubin levels. He states he takes medications for these illnesses and that his conditions will get worse if he is worried about his family or is separated from them.

After a careful review of the record, the AAO finds that if the applicant's husband, [REDACTED] relocated to Vietnam to avoid the hardship of separation, he would experience extreme hardship. The AAO acknowledges [REDACTED] contention that he is close with his family and that his entire family resides in the United States. In addition, the AAO acknowledges his contention that he has worked at the same company for over twenty years, since February 1991. Relocating to Vietnam would mean leaving his employment and all of its benefits. Furthermore, the record contains a letter from [REDACTED] physician confirming he has been diagnosed with the conditions he claims. The AAO acknowledges that relocating to Vietnam would disrupt the continuity of his health care treatment. Considering these unique factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Vietnam to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's situation, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] medical conditions, although the input of any medical professional is respected and valuable, nonetheless, the letter from his physician fails to describe the prognosis, treatment, or severity of his conditions and there is no suggestion he requires his wife's assistance in any way due to any medical problem. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Regarding emotional and psychological hardship, the record does not show that [REDACTED] hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of

deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). To the extent counsel contends [REDACTED] would be unable to support his wife in Vietnam, there is no evidence in the record to support the contentions that the applicant would not be able to contribute financially to her family or that her earning potential in Vietnam would be very low. Even considering all of these factors cumulatively, there is insufficient evidence showing that if he remains in the United States, the hardship the applicant's husband will experience amounts to extreme hardship.

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 applicant's husband, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.