



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 18 2013

Office: MOSCOW, RUSSIA

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212 of the Immigration and Nationality Act, 8 U.S.C. § 1182.

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.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Moscow, Russia, and 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 the Lithuania who was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I), (a)(6)(C)(i) and (a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), (a)(6)(C)(i), and (a)(9)(B)(i)(II), for having been convicted of a crime involving moral turpitude, for seeking to procure an immigration benefit through fraud or misrepresentation, and for having been unlawfully present in the United States for over one year. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v), (h) and (i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), (h) and (i).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of the Field Office Director* dated January 12, 2012. The applicant filed a motion to reopen and reconsider the denial. The director granted the applicant's Motion, but affirmed her original finding that the applicant's spouse would not face extreme hardship and denied the waiver application. *See Decision of the Field Office Director* dated March 15, 2012.

On appeal, the applicant, through counsel, claims that the applicant's spouse would face extreme hardship due to the applicant's inadmissibility. *See Appeal Brief*. Specifically, counsel cites the applicant's spouse's severe economic hardship. *Id.* at 4.

The record in this case contains, in relevant part, the appeal and appeal brief, the documents submitted with the applicant's motion to reopen, the applicant's waiver application and statements signed by the applicant and his spouse. The record also contains a psychological evaluation of the applicant's spouse, tax and financial documentation, and records relating to the applicant's child's education and therapy. The entire record was reviewed and considered in rendering 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(a)(9) of the Act provides:

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(B) ALIENS UNLAWFULLY PRESENT.-

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

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(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.

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(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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

Section 212(i) of the Act provides:

- (1) The Attorney General [now Secretary of Homeland Security (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.

The record reflects that the applicant first attempted to enter the United States under an assumed name in 1999. He was excluded and removed at the port of entry. The applicant nevertheless returned to the United States in 2000, again with a fraudulent passport and visa. He was arrested and, in 2007, convicted under 18 U.S.C. § 1001(a)(1) for concealing his identity to U.S. Citizenship and Immigration Services (USCIS). The applicant remained in the United States until his departure on June 16, 2010.

The AAO finds that the applicant is inadmissible under sections 212(a)(6)(C)(i) and (a)(9)(B)(i)(II) of the Act. The AAO finds it unnecessary to address the applicant's criminal grounds of inadmissibility because, if he is able to satisfy the waiver requirements of sections

212(a)(9)(B)(v) and 212(i), he will also satisfy the waiver requirements in section 212(h) of the Act.

The Act provides that a waiver of inadmissibility, under either section 212(a)(9)(B)(v) or (i) of the Act, is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. 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).

The applicant's case is based on a claim of extreme hardship to his U.S. citizen spouse. The record contains references to hardship that the applicant's child 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 under either section 212(a)(9)(B)(v) or (i) of the Act.<sup>1</sup> In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) or (i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 (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

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<sup>1</sup> Hardship to an applicant's child is an appropriate consideration when determining eligibility for a waiver of inadmissibility under section 212(h) of the Act.

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 1292 (9<sup>th</sup> 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 record in this case contains, in relevant part, an appeal brief, affidavits signed by the applicant, his spouse, family members and friends, documents relating to the early intervention services provided to the applicant's child, tax and employment documents, bank statements, a psychological evaluation of the applicant's spouse, and documents relating to the economic and political situation in Lithuania.

The evidence in the record, considered in the aggregate, demonstrates that the applicant's spouse would face extreme hardship should the applicant's waiver application be denied. The applicant's spouse's most recent income documentation demonstrates that she earned \$4863 in the year 2011. She is the recipient of state assistance and her daughter is enrolled in the state's medical insurance program. Her financial circumstances have worsened because of the applicant's inadmissibility. Although she has been assisted by her family in the United States, her economic situation is worse than that of others in her circumstances facing a spouse's inadmissibility. Her situation is exacerbated by the additional educational and therapeutic needs of her child. Additionally, according to her psychological evaluation, the applicant's spouse has been attending monthly therapy sessions to cope with her major depressive disorder and anxiety. Although depression and

anxiety are not atypical conditions in spouses facing separation, the applicant's spouse's condition must be considered in conjunction with her economic stress and the emotional hardship related to the couple's child's developmental delays. The AAO finds that the applicant's spouse's hardship rises to the level of extreme.

Similarly, the evidence in the record demonstrates that the applicant's spouse would face extreme hardship should she relocate to Lithuania. The applicant's spouse has family ties in the United States. She is also able to provide her daughter with the treatment and early intervention her developmental delays require. There is no indication that similar or equivalent treatment would be available for her child in Lithuania. Beyond facing a lower standard of living and volatile political situation upon relocation that many other individuals in the applicant's spouse's circumstances also face, the applicant's spouse may also be forced to deny her U.S. citizen child the treatment she requires. The AAO therefore finds that the applicant has established that denial of a waiver would result in extreme hardship to her spouse.

The AAO finds that the applicant has established that his inadmissibility would result in extreme hardship to his qualifying relative and therefore concludes that he is statutorily eligible for a waiver of grounds of inadmissibility.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether he 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 . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional 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 he is excluded and 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*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in

the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s fraudulent attempts to procure an immigration benefit and his conviction under 18 U.S.C. § 1001(a)(1). The favorable or mitigating factors in the present case include the applicant’s relationship with his U.S. citizen spouse and child, and other family ties in the United States. Other favorable factors include the applicant’s truck driving business ties to the United States. Further, it is noted that the applicant’s fraudulent attempts to enter the United States occurred over 12 years ago. It is also noted that he completed his probation in 2009, and has no criminal record in Lithuania or in the Village of Wheeling, Illinois. In balancing the mitigating and adverse factors in the present case, including those mentioned, the AAO finds that the favorable factors in the present matter outweigh the negative. A favorable exercise of the Secretary’s discretion is therefore warranted in this case.

The burden of proving eligibility in these proceedings remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. The appeal will be sustained.

**ORDER:** The appeal is sustained.