

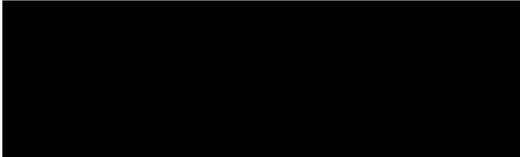
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



HS

FILE:

Office: CLEVELAND, OHIO

Date:

APR 05 2010

IN RE:

APPLICATION:

Application for Waiver of Ground of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cleveland, Ohio. 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 28-year-old native and citizen of Romania who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured a benefit under the Act through fraud or misrepresentation. The applicant is a beneficiary of an approved relative visa petition based on her marriage to a U.S. citizen, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *See Decision of the Director*, dated June 27, 2008. On appeal, the applicant contends through counsel that U.S. Citizenship and Immigration Services (USCIS) erred in denying the application. *See Form I-290B, Notice of Appeal*, dated July 24, 2008; *Brief in Support of Appeal*. Specifically, the applicant contends that she has presented overwhelming evidence that the denial of the waiver would impose extreme hardship on her U.S. citizen husband. *Id.*

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married in Ohio on January 22, 2004; an affidavit and sworn statement from the applicant; an affidavit from the applicant's husband; financial and tax documents; employer letters; medical records for the applicant; a warranty deed relating to the couple's property in Ohio; family photographs; Romanian country conditions information; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

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

Misrepresentation

(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.

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

Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 shows that the applicant was admitted to the United States on July 29, 2002, with a J-1 visa, valid for the duration of her status as a nonimmigrant exchange visitor. *See Form I-94, Arrival – Departure Record*. On October 1, 2003, the applicant signed an Employment Eligibility Verification Form (Form I-9), attesting that she was eligible to work in the United States because she was “[a] citizen or national of the United States.” *See Form I-9*. The applicant signed the Form I-9 under penalty of perjury and acknowledged that false statements made on the form would violate federal law. *See Form I-9* (providing notice of penalties for false statements).

The applicant states that she does “not recall completing the I-9 form and checking the citizenship or national box,” and at that time, her “English was not so good.” *Sworn Statement of* [REDACTED] dated Sept. 25, 2006. Additionally, the applicant claims that she “ha[s] never intentionally claimed U.S. citizenship for any reason or benefit” and that she “never intended to lie.” *Id.* However, there is no requirement that a misrepresentation be made with an intent to deceive in order for the inadmissibility bar to apply. *See Matter of Hui*, 15 I&N Dec. 288, 290 (BIA 1975) (“the intent to deceive is no longer required before the willful misrepresentation charge comes into play.”) Rather, knowledge of the falsity of the representation satisfies the willfulness requirement. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). Here, there is no evidence that the applicant actually believed she was a citizen or national of the United States at the time she signed the Form I-9. Accordingly, the applicant has not met her burden of establishing that her misrepresentation was not willful. Further, the Form I-9 is the official form used by employers to comply with the provisions governing the employment of aliens under the Act, subject to inspection by U.S. government officials. *See generally* section 274A of the Act, 8 U.S.C. § 1324a (governing the employment authorization of aliens). Accordingly, the applicant’s misrepresentation on an official U.S. government form for a benefit under the Act renders the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

In order to obtain a section 212(i) waiver, an applicant must show that the bar imposes an extreme hardship on the applicant’s U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant or to his or her children or other family members may not be considered, except to the extent that this hardship affects the applicant’s qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be

considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED], is a 32-year-old native of Slovenia and citizen of the United States. The applicant and her husband have been married for six years. The applicant asserts that her husband will suffer extreme hardship as a result of the denial of the waiver.

Regarding the emotional hardship of separation, the applicant's spouse states that he would "suffer severe separation anxiety, depression and other mental disorders" if he cannot talk to or visit the applicant. *Affidavit of* [REDACTED], dated Oct. 19, 2007. The applicant asserts that they "care for each other and have a strong bond," and that they "rely on each other for mental and emotional support." *Affidavit of* [REDACTED], dated Oct. 19, 2007. Additionally, [REDACTED] claims that medical care in Romania is poor, and that he would suffer if the applicant is not able to obtain follow up care for her pelvic surgery in Romania. *See Affidavit of* [REDACTED] *supra*; *Medical Records for* [REDACTED] [REDACTED] *Country Conditions Information* (noting that medical care in Romania, especially outside major cities, is generally not up to Western standards).

Regarding economic hardship, the record reflects that [REDACTED] is self-employed as a landscaping contractor, and that his individual annual income in 2007 was \$48,000. *See Form I-864, Affidavit of Support*. The applicant's annual income in 2007 was \$38,937. *Id.* The documents in the record reflect monthly expenses of \$2,272 for the couple. *See Financial Documents*. [REDACTED] contends that if the applicant is removed from the United States he would be unable to pay for the basic necessities of life. *Affidavit of* [REDACTED] *supra*. The couple claims that communication by phone would be costly, and that the cost of visiting Romania would cause extreme financial hardship. *See Affidavits of* [REDACTED] *and* [REDACTED] *supra*.

Although the record shows that separation from the applicant could cause various hardships to [REDACTED] [REDACTED], the evidence in the record does not demonstrate that the difficulties, considered cumulatively, would be extreme. First, while the potential emotional hardship of separation is apparent, the applicant did not provide medical records, probative testimony, or other evidence to show that the psychological hardships he fears would be unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, given the evidence of [REDACTED] income and expenses, the AAO cannot conclude that family separation would cause extreme financial hardship to [REDACTED], or that he would be unable to call and visit the applicant in Romania. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan, 927 F.2d at 468*. Finally, the hardships faced by the applicant as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. Here, [REDACTED] states that he would worry about his wife's follow up medical care in Romania. However, the evidence in the record does not indicate that the impact on [REDACTED] would rise to the level of extreme hardship.

Regarding relocation, [REDACTED] contends that a "self imposed exile" in Romania would cause extreme hardship. *Affidavit of* [REDACTED] *supra*. First, [REDACTED] claims that medical facilities in Romania are poor, and that if something were to happen to him there, he fears that he would not be able to obtain quality medical care. *Id.* Similarly, [REDACTED] states that he is "deeply scared that if [they] relocate to Romania that [he] will be overwhelmed with concern" for the applicant's safety and access to medical care in light of her past surgery for ureteropelvic junction obstruction. *Affidavit of* [REDACTED] *supra*; *Medical Records*. Second, [REDACTED] fears that he could be a victim of a violent crime in Romania. *Id.* Third, [REDACTED] worries that he would not be able to

make a living in Romania because of the problem of unemployment in that country. *Affidavit of* [REDACTED], *supra*. Fourth, [REDACTED] states that he is “used to the way of life in the United States and [is] not familiar with the culture of Romania.” *Affidavit of* [REDACTED], *supra*. The applicant also indicates that “the cultural difference would cause hardship as acclimation would be difficult for” her husband. *Affidavit of* [REDACTED]

The record contains country conditions information relevant to [REDACTED] concerns regarding relocation to Romania. However, the relevant evidence does not support the applicant’s contention that the challenges of relocation would be unusual or beyond that which would normally be expected upon relocation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566. Specifically, the applicant has not presented any evidence that her husband suffers from any significant health conditions that would cause hardship upon relocation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566. Any medical difficulties that would be faced by the applicant are not considered in the extreme hardship calculation, except to the extent these difficulties would affect the applicant’s husband. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i) (limiting consideration to the applicant’s spouse or parents). Although the applicant requires follow up care for her 2007 pelvic surgery, the evidence in the record does not indicate that such treatment would be unavailable or substandard in Romania, such that relocation would cause extreme emotional hardship to [REDACTED]. *See Country Conditions Information* (indicating that “[s]ome medical providers that are up to Western quality standards are available in Bucharest and other cities”). Additionally, [REDACTED] speculation regarding the potential for future employment in Romania does not show that the financial impact of relocation would be extreme. *See Country Conditions Information* (noting, among other things, that “[t]he Romanian economy is growing strongly, despite facing major restructuring problems,” and that it is “benefiting from the building boom”). [REDACTED] speculative fear that he would become a victim of crime in Romania also does not support a finding of extreme hardship. *See Country Conditions Information* (noting that while “crimes do occur in which victims suffer personal harm . . . most crimes in Romania are non-violent and non-confrontational”). Moreover, any adjustment difficulties encountered by [REDACTED] would be expected, and would not constitute hardship that was unusual or beyond that which would normally be encountered upon relocation due to a spouse’s inadmissibility to the United States.

In sum, although the applicant’s spouse claims hardships based on family separation and relocation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one’s family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

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



ORDER: The appeal is dismissed.