

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

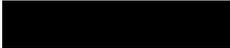


**U.S. Citizenship
and Immigration
Services**



45

Date: **AUG 22 2011**

Office: 

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

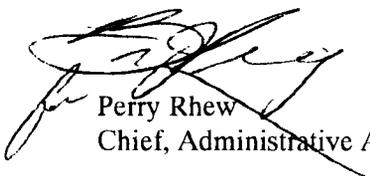


INSTRUCTIONS:

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 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 must 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 Field Office Director, [REDACTED] and 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 [REDACTED] who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for over a year and 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 having obtained a visa to enter the United States by willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 18, 2009.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship as a result of the separation of the family. Counsel submits additional evidence. *See Form I-290B and attachments.*

The record includes, but is not limited to, statements dated May 22, 2008 submitted with the Form I-601, and April 5, 2009 submitted on appeal, from the applicant's spouse, detailing the hardship claim; various documents that relate to the applicant's and his spouse's financial situation (submitted with applicant's adjustment application), including 2006 income tax returns, 2006 and 2007 Form W-2s, Earnings Statements for the periods ending September 15 and 30, 2007, and bank account statements; a birth certificate for the applicant's child; and a country specific information report for [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

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

....

(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.

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

- (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.

The record reflects that the applicant entered the United States on August 10, 2000, under the Visa Waiver Program, and was authorized to stay for a period not to exceed November 9, 2000. The applicant did not depart the United States until December 9, 2001, when he returned to [REDACTED]. On July 29, 2002 the applicant applied for, and was issued, a B1/B2 nonimmigrant visa at the United States Consulate in [REDACTED]. The applicant indicated on his visa application that he last entered the United States on August 10, 2000 and that his visit lasted only 28 days. On August 16, 2002, the applicant entered the United States as a B-2 non-immigrant.

A misrepresentation is generally material only if by it the alien received a benefit for which he/she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he/she be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

By stating on his nonimmigrant visa application, at the United States Consulate in [REDACTED] that when he entered the United States on August 10, 2000 his stay in the United States lasted only 28 days, when he had actually overstayed for more than 12 months, the applicant willfully misrepresented a material fact that would likely have precluded him from obtaining the visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and he requires a section 212(i) waiver.¹

¹ The applicant accrued unlawful presence from November 10, 2000, the day after his authorized stay expired, until December 9, 2001, when he departed the United States. Based on this history the Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The AAO need not address this issue in the present proceeding as a waiver under section 212(i) will also waive the applicant's inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 212(i) of the Act provides that:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family member 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).

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.

The applicant’s spouse states that she will suffer extreme financial hardship were she to reside in the United States without the applicant due to his inadmissibility. She states that her income is not sufficient to meet her financial obligations; that she is required to work long hours daily because she supplements her income as a school teacher by working with her school on curriculum projects, home instruction, tutoring, and coaching; that she will not be able to keep up with her schedule and maintain her income if she has to raise their child alone; and that she will not be able to pay for daycare on the income she would be making. The applicant’s spouse states that the financial information in the record submitted in October 2007 with her husband’s application is no longer accurate and “[Their] financial situation has changed greatly since then.” She states that in 2007 the applicant was not employed, but that he is now employed full-time; that they bought a house in April 2008 and each of them contributes towards the mortgage payment; and that without two incomes she cannot afford the house and will not be able to maintain the payments; their home will be foreclosed on because in the current market she cannot sell the house for the price they bought it; and that she will end up in “a personal financial crisis” from which she may not recover. The financial documentation in the record includes 2006 Income Tax returns for the applicant’s spouse; Form W-2 for 2006 and 2007 and 1099-INT statements for the year 2006; 2 earnings statements for the applicant for the periods ending September 15, and 30, 2007; an April 27, 2007 letter from the applicant’s employer confirming her reappointment for the 2007-2008 school year at a salary of \$52,640.00; Bank of America checking account statements for the periods August 21, 2007 to September 17, 2007, and February 6, 2008 through March 6, 2008; a CJFCU savings account statement dated June 30, 2007; an Equi-Vest 403(b) account statement dated September 17, 2007; a

Uniform Residential Loan Application dated April 30, 2008; a Contract for the Sale of Real Estate, dated February 25, 2008; and an automobile insurance declaration page dated March 7, 2008. However, the applicant's recurring monthly obligations cannot be determined from the financial documentation in the record.

The applicant's spouse states that the financial documents in the record are out of date and were submitted in connection with the applicant's permanent residence application. However, the record does not include updated financial information, including evidence of the applicant's income and their monthly financial obligations to support the applicant's spouse's claim of financial hardship. The AAO, therefore, is unable to assess the nature and extent of the financial hardship that the applicant's spouse would experience in the applicant's absence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant's spouse states that it would be an extreme emotional hardship to be without her husband. She also states that she is pregnant; that she cannot imagine having to raise a child without her husband; that she has a large stable family; that her parents, uncles, and aunts have been happily married for years; that she and her husband wish to raise their child together in a happy home; and that it would be "unbearable" for her, as well as for their child, to grow up without her husband.

It is noted that the record includes proof of the applicant's spouse's pregnancy and a birth certificate for her child who is about 22 months old. The AAO considers separation of a family as a hardship factor. However, the record lacks evidence that would allow the AAO to determine the nature and severity of the spouse's emotional hardship. Also, the applicant's spouse asserts that her child would suffer in the applicant's absence, but the child is not a qualifying relative and the record does not establish the impact of any emotional hardship she would suffer on her mother, the only qualifying relative.

The applicant's spouse will suffer emotional hardship as a result of separation. However, it has not been established, even when viewed in the aggregate, that any such hardship that would result from separation would be beyond the norm.

With respect to relocation, counsel asserts that the applicant's spouse was born in the United States and there is no requirement that she emigrate to [REDACTED] the applicant's country. As also pointed out by the Field Office Director, the applicant's spouse being a United States citizen cannot be required to relocate. It would be her choice to join the applicant. However, as discussed above, among the factors the Board in *Matter of Cervantes-Gonzalez* deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative, are 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 applicant's spouse states that her entire family are citizens of the United States; that she has secure employment as a tenured teacher in [REDACTED] and that there is no guarantee that she will find steady employment in [REDACTED] that her immigrant status in [REDACTED] will limit her employment opportunities; that she suffers from a Thyroid disease and she must visit her doctor every six months,

takes medicine daily, and cannot be sure the condition will not worsen if she relocates. However, the applicant does not provide sufficient evidence to support these claims. The record does not include documentation of the applicant's spouse's medical condition. It is noted that the 2008 Department of State *Country Specific Information for* [REDACTED] report in the record indicates that emergency and non-emergency services are provided free of charge to all, regardless of immigration status.

The applicant's spouse states that she has been a teacher for seven years at [REDACTED] High School, the school she primarily attended, and has been coaching softball for six years and soccer for a year. She asserts that the students, athletes, other teachers and coaches will be affected if she relocates to [REDACTED]. However, these individuals are not qualifying relatives, and the record does not indicate how the applicant's spouse would be impacted by any hardship they would suffer as a result of her relocation to [REDACTED].

The AAO finds, therefore, that even when the hardships factors in this proceeding are considered in the aggregate, the applicant has failed to establish that his qualifying relative would suffer extreme hardship were she to reside with the applicant in [REDACTED] due to his inadmissibility.

Also, as noted by counsel and the applicant's spouse, the Field Office Director incorrectly referred to [REDACTED] instead of [REDACTED] applicant's native country, on the last page of her decision. While the AAO regrets this error, we do not find the reference to [REDACTED] in the denial notice to have affected the Field Office Director's decision in this matter.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.