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



U.S. Citizenship
and Immigration
Services

115



DATE: JUN 28 2011

OFFICE: COLUMBUS, OH

FILE: [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.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Egypt who was found to be inadmissible to the United States 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 sought a benefit under the Act through fraud or willful misrepresentation. He is the spouse of a U.S. citizen and seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The Field Office 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 Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated June 27, 2008.

On appeal, counsel asserts that the Field Office Director minimized the extreme hardship that would be suffered by the applicant's spouse if she had to leave her mother in the United States or if she lost his support in caring for her mother. Counsel also states that the applicant's spouse has medical problems and is facing possible back surgery, making the applicant's assistance necessary. *Form I-290B, Notice of Appeal or Motion*, dated July 21, 2008.

The record of proceeding includes, but is not limited to, the following evidence: counsel's briefs; statements from the applicant, his spouse, his spouse's children, his mother-in-law, and his spouse's aunt; medical documentation relating to the applicant, his spouse and his mother-in-law; country conditions information on Egypt; support letters for the applicant from friends, an employee and family; evidence of the applicant's charitable donations; tax returns and W-2 forms; proof of homeowners and auto insurance; credit card and bank statements; documentation of the applicant's business enterprises; and achievement certificates awarded to the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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.

The Field Office Director found the applicant inadmissible to the United States based on his failure to disclose a 1969 marriage to the Egyptian mother of his four children. On appeal, however, counsel states that the applicant's failure to disclose his first marriage appears to have been the result of inaccurate translation and, further, that the applicant stood to gain nothing by failing to disclose his prior marriage. Counsel asserts that the applicant was divorced from his first spouse in February 1990 and that what has been perceived as his failure to reveal his first marriage would

not, therefore, have affected his ability to adjust his status based on his marriage to his second spouse.

The AAO notes that for a misrepresentation to bar admission to the United States under section 212(a)(6)(C)(i) of the Act, it must be material. The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were “material” was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now USCIS) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. 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 be excluded.

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

Counsel asserts that the applicant’s failure to disclose his prior marriage is not a material misrepresentation as the marriage was terminated prior to his 1994 marriage to his second spouse. The record, however, does not support counsel’s claim.

The AAO notes that the record contains the following evidence that offers information relating to the duration of the applicant’s first marriage: Form G-325As, Biographic Informations, for the applicant, dated July 21, 2004 and undated, which state that the applicant was divorced from his first spouse on February 22, 1990; a Form G-325A for the applicant, dated March 4, 1997, which indicates that the divorce took place in 1985; a transcript of the applicant’s hearing before an immigration judge on November 3, 1998 in which the applicant testified that his first divorce took place in 1985; and an Egyptian divorce decree that states witnesses appeared before the clergyman of Al-Halawat Region, an annex of the Al-Ibrahimeya Civil Office, on August 18, 2000 and testified that the applicant had already divorced his first wife.

Having reviewed the evidence that supports a 1985 or 1990 divorce date, the AAO does not find it to be probative. Instead, we will rely on the divorce decree issued by the Egyptian Registry Office, which establishes that the applicant was divorced from his first wife prior to August 18, 2000. However, as the decree demonstrates only that the applicant was divorced from his first wife no later than August 18, 2000, it does not prove that he had legally ended his first marriage prior to marrying his second wife. As the applicant may still have been married to his first wife at the time of his 1994 marriage to his second wife, the AAO finds his failure to disclose his first

marriage at his December 30, 1994 interview to be a material misrepresentation and to bar his admission to the United States under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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 the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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, etc., 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 AAO now turns to the question of whether the applicant in the present case has established that his spouse would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that relocation to Egypt would result in extreme hardship for the applicant’s spouse. He notes that she has resided in the United States for her entire life, that her family members all live in the United States, and that she is the only child of an elderly, widowed mother who needs her support and care. In a September 7, 2007 letter brief written in support of the applicant’s Form I-601, counsel contends that the applicant’s mother-in-law’s current physical state is poor and would become even worse if her daughter moves to Egypt. Counsel further states that Egypt is a volatile country and that there is little respect for human rights. He asserts that the applicant’s spouse would face discrimination in Egypt, both as a woman and a Christian.

In an August 8, 2008 statement, the applicant's spouse states that she has herniated discs in her lower back that have recently begun to cause her pain. Her physician, she states, has referred her to a neurosurgeon and she is in the process of choosing one. The applicant's spouse further states that her mother is elderly and disabled, that she has had one knee replaced and requires the replacement of the other, and that she also suffers from fibromyalgia, hypertension and sciatica in both legs. The applicant's spouse states that she is an only child and that her mother, widowed as of February 2004, depends on her for her daily needs. In earlier statements, dated August 13 and August 24, 2007, the applicant's spouse states that she is unfamiliar with the culture of the Middle East and does not speak Arabic. If she moves to Egypt, the applicant's spouse asserts, she would not be able to communicate with anyone who does not speak English.

The record also includes a July 30, 2008 psychological evaluation of the applicant's spouse, performed by licensed psychologist [REDACTED] who reports that the applicant's informed her that she has a herniated disc that is likely to require surgery and that she does not wish to have that surgery in Cairo as she believes the health care in Egypt is inferior to that in the United States.

In support of the claimed hardships, the record contains statements from the doctors treating the applicant's mother-in-law. [REDACTED] in a January 31, 2006 statement indicates that he is the applicant's mother-in-law's physician and that she suffers from arthritis in both knees, is awaiting a double knee replacement and requires the applicant's spouse's assistance for daily chores and attending doctors' appointments. A February 1, 2006 letter from [REDACTED] Tristate Orthopaedic Center, states that he is treating the applicant's mother-in-law for severe osteoarthritis in both knees and that she is scheduled for bilateral total knee replacements. He states that the applicant's mother-in-law lives alone and that because of the severity of her condition and the length of time required for recovery, she requires her daughter's assistance. An August 21, 2007 statement from [REDACTED] The Freiberg Spine Institute, states that the applicant's mother-in-law had a total knee arthroplasty (replacement) of her right knee in November 2006. An August 21, 2006 statement from [REDACTED] Montgomery Internal Medicine, reports that the applicant's mother-in-law is being treated for hypertension and asthma.

A second statement from [REDACTED], dated July 8, 2008, reports that the applicant's spouse has been his patient since 2002 as a result of a back problem and that recent MRIs have resulted in his referring her to a spine surgeon. Although the record does not provide a final diagnosis and treatment plan for the applicant's spouse's back problem, the AAO notes that a June 16, 2008 MRI report indicates that there has been "disease progression" since a previous MRI was done on May 1, 2002.

A review of the record also finds country conditions materials on Egypt, which include the section on Egypt from the Country Reports on Human Rights Practices – 2006, issued March 6, 2007; a Department of State travel advisory for the Middle East and North Africa, dated May 14, 2007; a Consular Information Sheet for Egypt, dated June 20, 2007; the 2007 Amnesty International

Report on Egypt. While the information provided by these reports has, in great part, been superseded as a result of the fall of the Mubarak government in February 2011, the AAO notes that a Travel Alert issued by the Department of State on April 28, 2011 continues in effect for U.S. citizens thinking of traveling to Egypt. The Alert, which replaces a Travel Warning issued on March 29, 2011, states that since the change in government, Egyptian security services have not yet fully redeployed and that U.S. citizens should be aware of the potential for "sporadic unrest." The AAO also notes continuing reports of sectarian violence in Cairo. We further observe that the Consular Information Sheet submitted for the record indicates that while Egyptian medical facilities are adequate for nonemergency matters, emergency and intensive care facilities are limited and that medical facilities outside Cairo, [REDACTED] fall short of U.S. standards.

Having reviewed the record, the AAO finds that when considered in the aggregate, the applicant's spouse's separation from her family in the United States, her inability to speak Arabic, her unfamiliarity with Egyptian society and the unsettled nature of Egypt's future, her responsibility for her elderly mother, her back problems, and the normal disruptions and difficulties she would confront on relocation establish that she would experience extreme hardship if she moves to Egypt with the applicant.

Counsel also contends that the applicant's spouse would suffer extreme hardship if she remains in the United States. He states that separation from the applicant would result in extreme psychological hardship for his spouse and points to the previously noted psychological evaluation of the applicant's spouse prepared by [REDACTED] on July 30, 2008, as well as a psychiatric examination of the applicant's spouse conducted by psychiatrist [REDACTED] on August 29, 2007. Counsel further states that in the applicant's absence, his spouse would experience extreme medical hardship as a result of herniated discs that require surgery. The applicant's spouse's back, counsel asserts, did not pose a problem for her at the time the applicant initially filed the Form I-601.

In addition to the emotional and physical hardships that would be suffered by the applicant's spouse as a result of separation, counsel claims that she would also suffer financial hardship. He contends that she would have to return to work and would have to sell her and the applicant's homes as she would not be able to afford the expense on her own. Counsel also notes that the applicant, subsequent to filing the I-601, purchased a new business, a Marathon gas station, valued at \$1.05 million, which his spouse is not capable of managing. Counsel asserts that since this business is so recently purchased, no profit can be gained from its sale.

Although the AAO acknowledges counsel's claims of financial hardship, we do not find the record to document them. The record contains two bank statements from Fifth Third Bank, one an online report dated December 28, 2005 and the other a printed statement covering the period June 6, 2007 to July 5, 2007. We note that both statements indicate the applicant and his spouse have significant resources. Both reflect a substantial amount of money in savings, and the 2005 statement indicates that they had more than \$1.4 million in a brokerage account at the end of 2005.

Moreover, the AAO notes that the record includes documentation that establishes the applicant's October 29, 2007 purchase of the Withamsville Marathon gas station, valued at \$1.05 million and that no evidence in the record demonstrates that this enterprise could not continue to operate and generate income in his absence.

Having established the applicant's and his spouse's resources, the record on appeal does not contain documentation that would prove the financial obligations that would be faced by the applicant's spouse if he is returned to Egypt, including the mortgage payments on the properties owned by the applicant and his spouse. Accordingly, the AAO is unable to determine that the applicant's spouse would be unable to meet her financial responsibilities using the resources already at her disposal.

In support of counsel's claim that separation would result in significant emotional hardship for the applicant's spouse, [REDACTED] psychological evaluation reports that she is experiencing sleeplessness, nervousness and shakiness, headaches, difficulty focusing, a sense of being trapped, and irritability. He indicates that he also administered a Symptom Checklist 90-R, designed to measure symptomatic psychological distress, and the Minnesota Multiphasic Personality Inventory-2 to the applicant. [REDACTED] states that he found both tests to indicate that the applicant's spouse's anxiety levels were substantially elevated. He further concludes that her symptoms support a clinical diagnosis of Anxiety Disorder and that separation from the applicant would result in the continued deterioration of her mental state, which might result in an acute break with reality.

The second evaluation, conducted by [REDACTED] finds that the applicant's spouse has developed Adjustment Disorder with Mixed Anxiety and Depressed Mood as a "direct result of her fear that her husband . . . might be forced to . . . return to Egypt." [REDACTED] indicates that the applicant's spouse exhibits the following symptoms: excessive appetite, difficulty focusing and concentrating, persistent sadness, frequent crying spells, and chronic anxiety and apprehensiveness. She states that a separation from the applicant would be "painfully difficult" for his spouse and would lead to an increase in her symptoms, most likely causing her to develop a Major Depressive Disorder.

As proof of the applicant's spouse's back problems, the record contains the previously noted statement from [REDACTED] who reports that the applicant's spouse has been his patient since 2002 as a result of a back problem and that recent MRIs have resulted in his referring her to a spine surgeon. The record includes a June 16, 2008 MRI report on the applicant's spouse's back that indicates that there has been "disease progression" since a previous MRI was done on May 1, 2002. While the record fails to indicate the extent to which the applicant's spouse is affected by her back problem, the AAO, nevertheless acknowledges that she has a medical problem serious enough for her doctor to recommend a surgical consultation.

The AAO finds that when considered together, the above psychological evaluations distinguish the emotional hardship that would be experienced by the applicant's spouse in his absence from

that normally created when spouses are separated. Further, the AAO takes note of the fact that the applicant's spouse is experiencing problems with her spine that are serious enough for her doctor to consider surgery. We also acknowledge that in the applicant's absence, his spouse would be entirely responsible for her elderly mother who suffers from a range of medical problems. When these specific factors and the hardships normally created by the separation of spouses are considered in the aggregate, we conclude that the applicant has demonstrated that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

As the applicant has established extreme hardship to his spouse as a result of his inadmissibility, he is statutorily eligible for a waiver under section 212(i) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise 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 section 212(h)(1)(B) 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 misrepresentation for which he now seeks a waiver, and his periods of unlawful employment and residence in the United States. The mitigating factors in the present case are the applicant's U.S. citizen spouse; the extreme hardship to his spouse if the waiver application is denied; his documented charitable contributions to such organizations as the Salvation Army, the Red Cross, the Cincinnati Children's Hospital and Deaconess Hospital, also in Cincinnati; his business ownership in the United States; the absence of

a criminal record; his payment of taxes; his central role he plays in the lives of his mother-in-law and his spouse's adult children, as evidenced in their respective statements; and his involvement in and commitment to the Cincinnati community, as stated in the letters of support provided by his friends.

The AAO finds that the misrepresentation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.