

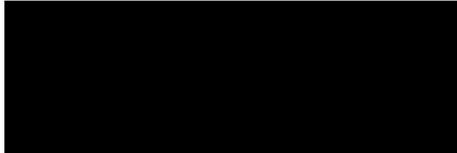
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



tl5

DATE: **OCT 07 2011** Office: PHILADELPHIA, PA

FILE:

IN RE: Applicant:

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.

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 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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Indonesia who used a photo-altered passport of another person to enter the United States. The applicant 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). She is the wife of a U.S. citizen. The applicant is seeking a waiver 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 concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 31, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director improperly weighed the evidence of hardship and improperly denied the waiver as a matter of discretion. *Form I-290B*, received April 22, 2009.

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 record establishes that the applicant used a photo-altered passport of another person to enter the United States on February 8, 2002, and thus entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

On appeal, counsel for the applicant asserts that the Field Office Director failed to provide the applicant with the forensics evidence that established that the applicant's passport was photo-altered. However, the record reflects that, on February 19, 2009, the Field Office Director issued a Notice of Intent to Deny which explained that the passport presented by the applicant during her adjustment interview had been found to have been altered. In issuing the Notice of Intent to Deny, the Field Office Director complied with the regulation at 8 C.F.R. § 103.2(b)(16)(i) which states that USCIS *must inform an applicant when a decision will be based on information not known to them*. Further, the AAO notes that the applicant submitted an Affidavit of Name, Place and Manner of Entry submitted in support of her form I-601 application in which she acknowledged that she is not the person named on the passport she used to enter the United States. Counsel's assertions are not persuasive. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; statements from the applicant, her spouse and member's of the applicant's spouse's family; an employment letter, pay stubs and tax documentation for the applicant's spouse; country conditions materials on Indonesia; medical records pertaining to the applicant's spouse's mother; medical records pertaining to the applicant's spouse; a statement from [REDACTED], dated May 4, 2009; a psychological evaluation of the applicant's spouse by [REDACTED]; a hand-written statement from the East-West Medical Group listing a prescribed medication for the applicant's spouse; and photographs of the applicant, her spouse and their family.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General 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 the applicant or her children 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-Morales*, 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.*

Counsel for the applicant asserts on appeal that the applicant's spouse would suffer extreme emotional and economic hardship upon relocation. *Brief in Support of Appeal*, received April 22, 2009. Counsel explains that the applicant's spouse's mother, who previously suffered from cancer and now suffers from diabetes and hypertension, resides with the applicant's spouse and depends on

him financially. He further states that the applicant has two sisters and seven nieces and nephews who reside in the United States, that the applicant has no family contacts in Indonesia, that the applicant's spouse has resided in the United States his entire life and is unfamiliar with the culture and conditions in Indonesia and would not be able to find employment due to his age and lack of relevant skills and not have access to adequate medical care.

The record includes country conditions materials for Indonesia, including the U.S. State Department's 2008 Report on Human Rights and an excerpt from the CIA World Factbook. General economic conditions in an alien's native country will not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. In this case, while the documentation submitted might establish that Indonesia has a lower standard of living than the United States, it does not establish that the applicant's spouse would be unable to find employment or healthcare, and thus does not establish that he would encounter any uncommon hardships factors upon relocation.

The record includes statements from the mother and sisters of the applicant's spouse. The applicant's spouse's mother indicates that she resides with the applicant's spouse and considers the applicant one of her daughters. *Statement of the Applicant's Mother-in-Law*, dated January 26, 2009. A statement from one of the applicant's sisters states she is unable to work and has to care for four children as a single mother. *Statement of the Applicant's Sister*, dated May 4, 2009. A statement from another of the applicant's sisters indicates that she could care for her mother even though it would be a financial and physical strain given that she also has three children. *Statement of the Applicant's Sister*, dated May 7, 2009. While the AAO recognizes that it may be a difficulty for the applicant's sisters to care for their mother, there is no indication that this would cause a significant hardship factor for the applicant's spouse. The AAO does not find the evidence to support that the applicant's spouse's other family members would be unable to mitigate the financial impact to his mother if he were to relocate to Indonesia with the applicant.

The AAO recognizes that the applicant's spouse may not have family contacts in Indonesia, and would have to sever family and community ties in the United States if he relocated. The AAO also recognizes that the applicant's spouse may experience some acculturation impacts upon relocation. However, these impacts are not uncommon, and even when viewed in the aggregate, fail to establish that the applicant's spouse would experience hardship rising to the level of extreme upon relocation.

On appeal, counsel for the applicant asserts the applicant's spouse would experience emotional and financial hardship upon separation. *Brief in Support of Appeal*, received April 22, 2009. Counsel explains that the applicant's spouse suffers from chronic depression and anxiety due to physical and emotional abuse he suffered as a child and that removal of the applicant would exacerbate his condition. Counsel also asserts that the applicant's spouse does not earn high wages and that the applicant's second income would help stabilize his household and support his chronically ill mother.

The record includes a psychological evaluation from [REDACTED] and a statement [REDACTED]. The record also includes a hand written statement of prescription from the [REDACTED].

East-West Medical Group and raw medical records from the applicant's spouse's regular physician. The AAO cannot interpret raw medical data or notes, thus, the medical file from the applicant's spouse's physical does not provide any relevant support for counsel's assertions. The statement from [REDACTED], dated May 4, 2009, indicates that the applicant was treated for three sessions of outpatient psychotherapy in December 2000 and January 2001. However, the AAO notes that this statement lacks detail and is not sufficiently probative to support counsel's assertions, stating only that the therapy was to address "various issues" and that the spouse was working to develop strategies to deal with the "stressors in life" The statement gives no indication of spouse's condition at the time. The evaluation from [REDACTED] discusses the applicant's spouse's mental health symptoms and the potential impacts on him if he relocated to Indonesia or if the applicant were removed and he remained in the United States. [REDACTED] evaluation concludes that the applicant's spouse is suffering from Major Depression and indicates that his condition is controllable with medication. The AAO will give due consideration to [REDACTED] report and consider the emotional hardship factor when aggregating the impacts on the applicant's spouse.

The record contains some financial documentation and evidence of the applicant's spouse's earnings and financial obligations. Although the record indicates that the applicant's spouse's mother receives some income from social security and a part time job, the record does not establish the amount of her income. The AAO notes that the 2007 tax return that was submitted for the applicant's spouse does not list his mother as a dependent. While the AAO recognizes the applicant's spouse may not have high earnings the record does not establish that the combined incomes of the applicant's spouse and his mother would be insufficient to meet their financial obligations.

On appeal, counsel for the applicant asserts that the Field Office Director failed to examine relevant hardship factors discussed in precedent case law. As noted above, it is the applicant's burden to establish eligibility. This burden includes articulating any basis of claimed hardship and supporting any assertions with relevant, probative evidence. The AAO cannot presume facts or construct assertions on behalf of an applicant.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. As the applicant has failed to establish extreme hardship to a qualifying relative no purpose would be served in examining whether she warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.