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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**



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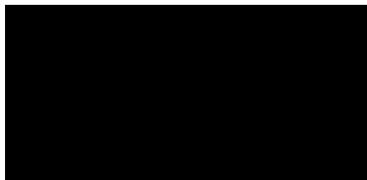
DATE: APR 04 2012 Office: SANTA ANA, CA

FILE: [REDACTED]

IN RE: Applicant: [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.

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Viet Nam and a citizen of Australia who was found inadmissible for misrepresentation as an intending immigrant when entering 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 spouse 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 November 9, 2009.

On appeal, counsel for the applicant's asserts that the extreme hardship standard was applied incorrectly in this case. *Form I-290B*, received December 11, 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 indicates that the applicant entered the United States with a B-2 visitor visa on July 31, 2006. She married the current applicant on August 3, 2006, and filed an application for adjustment. The Field Office Director found the applicant inadmissible for misrepresenting her intent to immigrate to the United States and entering with a visitor's visa. The applicant's spouse asserts that the applicant did not intend to immigrate to the United States when she entered on July 31, 2006.

Although the AAO is not bound by the Foreign Affairs Manual, reference to its provisions is informative in determining an applicant's inadmissibility due to misrepresenting an intent to immigrate.

9 FAM 40.63 N4.2 states:

In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).

The Department of State has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry (POE), that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by: ...Marrying and taking up permanent residence." 9 FAM 40.63 N4.7-1(3).

In this case the record establishes that the applicant entered the United States on July 31, 2006, as a visitor for pleasure. The applicant then married her current spouse on August 3, 2006, 3 days later.

If conduct which violates the non-immigrant status occurs within 30 days of entry to the United States a presumption of misrepresentation arises. 9 FAM 40.63 N4.7-2. The applicant's spouse asserts that they did not decide to get married until a day after the applicant entered the United States, and that the applicant had no intent to deceive U.S. immigration authorities. The applicant's spouse did not provide any evidence to support his assertions. Based on the presumption of misrepresentation, and the failure of the applicant's spouse to submit sufficient evidence to rebut the presumption, the AAO finds that the Field Office Director's determination that the applicant misrepresented her intent upon entering the United States was reasonable and will be upheld.

The record contains, but is not limited to, the following evidence: a statement from the applicant's spouse; copy of an electronic Ticket Itinerary; copies of credit card bills in the applicant and her spouse's names; a copy of the applicant's spouse's 2008 tax return; an employment letter on behalf of the applicant's spouse; copies of banks statements; photographs of the applicant and her spouse; and documents filed in relation to the applicant's Form I-864 and Form I-485.

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 his 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-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

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speaking 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 has submitted a statement asserting he will experience emotional and financial hardship if the applicant is removed. *Statement of the Applicant's Spouse*, undated. The applicant's spouse asserts that he would not be able to work and provide care for his son without the applicant, and that the applicant is the primary caretaker for their son. He states that he would be lost without the applicant to support him.

While the record contains evidence of the applicant and her spouse's life together, there is insufficient evidence to quantify the applicant's financial contribution during her residence in the United States. The applicant's spouse indicates that the applicant will not work, but will provide child care for their son. However, the applicant's spouse has not indicated that he would be unable to afford child care services in the applicant's absence. Therefore, the AAO finds that the record does not distinguish the financial impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to the applicant's spouse's assertion of emotional hardship, the AAO accepts that separation from the applicant and possibly his child will result in some emotional impact. However, the record, as with other assertions, fails to distinguish any emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

In addition, as discussed by the Field Office Director and noted above, children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant to the extent that it indirectly impacts a qualifying relative. In this case there is insufficient evidence in the record to establish that the applicant's son will experience hardship to such a degree that it will create an indirect hardship factor on the applicant's spouse.

Even when the impacts asserted upon separation are examined in the aggregate, there is insufficient evidence to establish that they rise to the level of extreme hardship.

The applicant has not articulated what impacts, if any, the applicant's spouse would experience upon relocation to Australia. Without evidence to distinguish the impacts on the applicant's spouse due to relocation the record fails to establish that a qualifying relative will experience extreme hardship upon relocation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse may suffer emotionally as a result of separation from his wife and child, or would have to assume additional parenting duties. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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. 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.

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.