

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  
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Date: Office: SEATTLE, WASHINGTON FILE:

**APR 06 2012**

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 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, Seattle, Washington, 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 El Salvador 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 willfully misrepresenting a material fact in order to procure an immigration benefit. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 25, 2008.

On appeal, the applicant, through counsel, claims that the applicant's departure from the United States will negatively impact his wife, son, and parents-in-law. *See appeal brief attached to Form I-290B*, dated October 24, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, his wife, and father-in-law; employment documents; medical documents for the applicant's son; and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The [Secretary] may, in the discretion of the [Secretary], 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 [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.

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 (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.

In the present case, the record indicates that the applicant applied for temporary protected status (TPS) by using someone else's name. Additionally, on two separate occasions, the applicant mailed his passport to his father in El Salvador to obtain entry stamps so that it did not appear he overstayed his United States nonimmigrant visa. Based on these misrepresentations, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 and his son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In a statement dated April 30, 2008, the applicant states he and his wife could not obtain employment in El Salvador, he does not want his son to grow up in El Salvador, and his wife is very close to her parents in the United States. Additionally, he states that they reside with his in-laws to help them with their mortgage payment and to provide care for them because of their health conditions. In a statement dated October 21, 2008, the applicant's father-in-law states the applicant and his daughter pay \$600.00 a month to him for rent. The applicant claims that his father-in-law had intestinal surgery and his mother-in-law has diabetes. The AAO notes that no medical documentation has been submitted establishing that the applicant's father-in-law and mother-in-law suffer from any medical conditions, or that they require the assistance of the applicant or of their daughter because of their medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

In a statement dated September 12, 2007, the applicant's wife states she plans on applying to a nursing program, and she could not afford to pay for schooling either in El Salvador or in the United States without the applicant's help. Additionally, the applicant's wife expresses concerns for their son if they join the applicant in El Salvador. Specifically, she states their son has allergies, medical services in El Salvador are "very bad," and medicine is expensive. Moreover, the applicant's wife also states that violence and gangs are prevalent among young people in El Salvador. Medical documentation in the record establishes that the applicant's son has been seen for allergies and well visits, but it fails to show that the applicant's son cannot receive medical treatment in El Salvador or that he has to remain in the United States to receive treatment. Additionally, though the applicant's son may suffer some hardship in El Salvador, he is not a qualifying relative, and the applicant has not shown that hardship to their son has elevated his wife's challenges to an extreme level.

The AAO acknowledges that the applicant's wife is a citizen of the United States and relocation abroad would involve some hardship. However, the applicant's wife also is a native of El Salvador and it has not been established that she does not speak Spanish or that she has no family ties to El Salvador. Though the applicant's wife is employed in the United States and she would be required to give up her employment if she relocated to El Salvador to live with the applicant, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States, or that she could not attend nursing school in El Salvador. Additionally, as noted above, there is no evidence in the record to establish that the applicant's father-in-law and mother-in-law require the assistance of their daughter with their medical condition. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to El Salvador.

Counsel states the applicant's wife and parents-in-law "greatly rely" on the applicant for economic support. As noted above, the applicant's father-in-law states the applicant and his daughter pay \$600.00 a month to him for rent. The applicant's wife states she would struggle trying to raise their son alone and that she cannot afford childcare for their son without the applicant's help. The applicant also states their son receives medical coupons and his wife does not have health insurance; however, if the applicant becomes a lawful permanent resident, he can obtain health insurance for his family through his employer. The applicant's wife also states that she could not afford her son's medicine without the applicant's help. The applicant states that without his salary, his wife could not afford all the bills, to buy a house, or attend school.

Counsel claims that the applicant's father-in-law had intestinal surgery, his mother-in-law has diabetes, and they both rely on the applicant for care. As noted above, no medical documentation has been submitted establishing that the applicant's father-in-law and mother-in-law suffer from any medical conditions, or that they require the assistance of the applicant or of their daughter because of their medical conditions. Additionally, the applicant's parents-in-law are not qualifying relatives, and the applicant has not shown that hardship to his parents-in-law has elevated his wife's challenges to an extreme level.

The applicant's wife states that without the applicant, she would find it emotionally very difficult, she would "suffer a lot," and be depressed. She also states their son is very attached to the applicant and would be depressed if the applicant returned to El Salvador. In a statement dated October 21, 2008, [REDACTED] states the applicant's son started her school with "significant social-emotional needs." [REDACTED] adds that the applicant's son "has made incredible progress" but separating the applicant from their son would be detrimental and "could lead to significant [setbacks]." As noted above, the applicant's son is not a qualifying relative, and the applicant has not shown that hardship to their son would elevate his wife's challenges to an extreme level.

The AAO acknowledges that the applicant's wife may suffer some emotional problems in being separated from the applicant. However, while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Regarding financial hardships, the AAO finds the record to include some documentation of the applicant's and his wife's income and expenses; however, this material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the AAO notes that there is no documentary evidence in the record establishing that the applicant would be unable to obtain employment in El Salvador and, thereby, financially assist his wife from outside the United States. The AAO also notes that the applicant's wife may suffer some hardship in having to care for her son alone; however, no documentation has been submitted establishing that her hardship would rise to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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.