

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

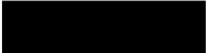
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

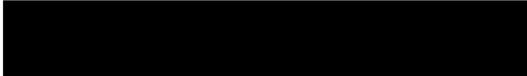


U.S. Citizenship
and Immigration
Services



H5

Date: APR 12 2012 Office: LOS ANGELES, CALIFORNIA 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.

Thank you,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Syria 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 seeking to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and 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.

The Field Office Director found that the applicant had 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 October 28, 2009.

On appeal, the applicant, through counsel, claims that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. *Addendum to Form I-290B*, filed November 30, 2009.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his wife, psychological and medical documentation for the applicant's wife, bankruptcy and financial documents, country conditions documents on Syria, and documents pertaining to the applicant's removal proceeding. 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.

In the present case, the record indicates that on December 24, 2000, the applicant attempted to enter the United States by presenting a Venezuelan passport in someone else's name. Based on this misrepresentation, 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 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 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 United States Citizenship and Immigration Services (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 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. *Supra* at 565. 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 counsel’s appeal brief dated December 23, 2009, counsel states that the applicant is presenting additional evidence about the gravity of his wife’s condition, Polycystic Ovarian Syndrome (PCOS). Medical documentation in the record establishes that the applicant’s wife has been diagnosed with PCOS and provides detailed information about this condition. Additionally, counsel claims that the applicant’s wife is suffering from depression, which “has been compounded by the naked fear that [the applicant] may be removed.” In a psychological evaluation dated December 20, 2009, [REDACTED] indicates that the applicant’s wife’s Depression Inventory score “puts her at a moderate level of depression.” [REDACTED] states the applicant’s wife “presented with a Major Depressive Disorder, severe anxiety and Panic Attack Disorder.” Counsel states that according to [REDACTED] applicant’s wife’s severe medical condition “will not allow her to travel far or be out of the United States for long periods of time.”

In a statement dated August 3, 2009, the applicant states he cannot take his wife to Syria because she is “an American, a female, a Christian and being that [they] are interracial there is no way that she would be able to survive.” Counsel states the applicant’s wife has no family ties to Syria. The record establishes that the applicant’s wife is a native of Mexico. [REDACTED] reports that the applicant and his wife have no support system in Syria, and “[f]inancially they will be devastated.” Counsel claims that the applicant’s wife fears living in Syria because of the applicant’s political issues, and also she does not speak Arabic. Counsel states the applicant’s wife wants to finish her degree in the United States. The record establishes that the applicant’s wife is seeking a master of business administration at La Sierra University. Counsel states the applicant’s wife is studying to become a certified public accountant and plans to open her own business; however, she would be unable to do that in Syria because “of the language and cultural barriers that would be imposed upon her.” Counsel states that “the Syrian government oppresses people who do not share in its philosophy” and Christians “face discrimination in

that country.” The record contains various country conditions documents on Syria. Additionally, the AAO notes that on March 6, 2012, the United States Department of State issued a travel warning to U.S. citizens about the security situation in Syria, advising “against travel to Syria and recommend[ing] that U.S. citizens in Syria depart immediately.” The warning also states that the U.S. Embassy suspended all operations in Syria on February 6, 2012, “given ongoing violence and a deteriorating security situation.”

Based on her safety concerns in Syria; her lack of ties to Syria; her lack of Arabic language skills; her medical and emotional issues and possible disruption of her medical treatment; and disruption of her graduate studies; the AAO finds that the applicant’s wife would suffer extreme hardship if she were to join the applicant in Syria.

Regarding the hardship the applicant’s wife would suffer if she were to remain in the United States, the applicant states his wife “is in need of full time support both financially and emotionally.” The applicant states his wife “is constantly frustrated by the process, is overwhelmed by daily living and events and the pressure of [his] situation has made her extremely agitated and troubled.” Counsel claims that he applicant’s wife has “become increasingly depressed and despondent about losing [the applicant].” The applicant states his wife has been suicidal in the past. [REDACTED] reports that the applicant’s wife had “severe depression, panic attacks and suicidal ideation in 2007-2008,” and she “feels she is back in the same place.” Additionally, [REDACTED] reports that the applicant’s wife is distanced from her family in the United States. Counsel states the applicant’s wife is “unable to focus well in school, to sleep, or to even handle normal day-to-day living activities.” As noted above, [REDACTED] diagnosed the applicant’s wife with major depressive disorder and severe anxiety, and indicated that she was prescribed an anti-anxiety medication by her primary doctor. [REDACTED] also states the “fear of losing [the applicant], the threat of another bankruptcy while [the applicant’s wife] is trying to meet the demands of the graduate program have overwhelmed her vulnerable coping strategies and overall adjustment manifesting in Panic Attacks and Major Depressive Disorder.” Additionally, as noted above, the applicant’s wife was diagnosed with PCOS. In a statement dated August 3, 2009, the applicant’s wife states there is no cure for PCOS, but her doctor recommended that she “rid [herself] of [her] stress, exercise and lose weight.” However, she claims that she cannot relax because of the applicant’s immigration status. The record contains articles and documentation on PCOS. She states that if the applicant’s situation resolves, her health will improve. The applicant’s wife states they would also like to start fertility treatments, since PCOS affects her chances of becoming pregnant. Additionally, the applicant states his wife needs to see a doctor because of her mental condition; however, they do not have health insurance that will cover that type of treatment.

The applicant’s wife states due to the master’s program she is attending, she cannot work, and she relies on the applicant “completely to support [her].” The applicant states he works several jobs in order to support his wife, and they live with his family to minimize expenses. Tax documents in the record establish that the applicant is the primary wage earner in the family. Counsel states that the stress of the applicant’s situation has “led to severe financial difficulties resulting in [the applicant’s wife] filing for bankruptcy.” The record establishes that the applicant’s wife filed for bankruptcy in 2007. The applicant states his wife has “issues concerning overspending and spends money to try to make herself feel better. This adds to her situation because [they] then have bills that cannot be paid,” adding to their stress.

Additionally, documentation in the record establishes that the applicant's wife has a significant student loan debt.

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her mental health issues; medical issues; and financial issues; the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 include the applicant's misrepresentation, unauthorized employment, and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen wife; the extreme hardship to his wife if he were refused admission; the absence of a criminal record; his history of paying taxes; and letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.