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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

Date: APR 19 2012

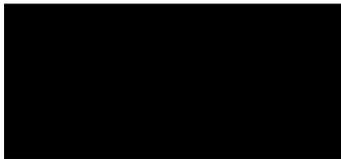
Office: SEATTLE

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,


for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Morocco who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. Citizen husband.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 13, 2009.

The record contains the following documentation: a brief in support of appeal; a declaration of the applicant; a declaration of the applicant's spouse; a psychological evaluation of the applicant's spouse and children; and the documentation submitted with the applicant's prior Form I-601 application and appeal.¹ The entire record was reviewed and considered in rendering a decision on the appeal.

On appeal, applicant's counsel contends that the applicant did not make a willful material misrepresentation when she applied for a non-immigrant visa in May 2000.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) 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 a proper determination that he be excluded. *Id.* at 447.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence that the applicant did not misrepresent herself when she applied for a non-immigrant visa in May 2000. The record shows that the applicant obtained a non-immigrant B-

¹ The applicant filed an appeal of the denial of a prior Form I-601 on August 29, 2002, which was dismissed by the AAO on November 19, 2003. On December 8, 2003, the applicant filed a Motion to Reopen, which was dismissed by the AAO on February 3, 2005.

2 tourist visa at the U.S. Consulate in Casablanca, Morocco, on May 18, 2000, based on the assertion that she was visiting an uncle in the United States, and that she would remain in the United States for only 15 days, commencing on June 2, 2000. In response to question 32 of the OF-156 non-immigrant visa application, the applicant did not indicate the presence of a fiancé in the United States. The record further shows that the applicant used the tourist visa to enter the United States on June 4, 2000, and that she married the petitioner three days later on June 7, 2000. Although the applicant claims that it was only after she had arrived in the United States and talked to a lawyer that she decided to get married, the AAO notes that the applicant's marriage license is dated May 19, 2000, while she was still in Morocco. As such, based on the evidence in the record, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for failure to disclose her immigrant intent before the U.S. Consular Office, thus procuring a visa and admission to the United States through fraud or misrepresentation.

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

- (i) 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.

Section 212(i) of the Act provides that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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 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 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 asserts that the applicant's spouse will suffer extreme hardship, more than would normally be associated with family separation, if the waiver is denied. *See Brief in Support of Appeal*, dated June 15, 2009. In support of this contention, the applicant submitted a psychological evaluation, which indicated that the applicant's spouse is suffering from mild levels of obsessive compulsivity and depression, and that he experienced major depressive episodes due to the applicant's immigration problems. During these episodes, the applicant's spouse reported suffering from insomnia, obsessive rumination, poor appetite, low self-esteem, chronic fatigue, and reduced concentration, which are symptoms of Major Depressive Disorder. The psychological evaluation concludes that the separation would likely exacerbate the applicant's spouse's already elevated levels of depression, and potentially catapult him into developing a full-fledge major depression. *See Psychological Evaluation of [REDACTED]* dated June 10, 2009. The information contained in the 2009 psychological evaluation is similar to an earlier forensic psychological examination which was conducted on the applicant's spouse in 2002. This examination states that the applicant's spouse suffers from chronic vulnerability to psychological loss, which, if activated, leads to symptoms of depression, anxiety and rumination, and that separation from the applicant, the applicant's spouse risks severe emotional distress. *See Forensic Psychological Examination by Dr. Barton Evans*, dated June 22, 2002.

Under section 212(i) of the Act, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. The applicant has two sons. According to the psychological evaluation cited above, if the applicant's children relocate to Morocco with the applicant, the applicant's spouse would suffer psychological hardship due to concern for their safety and well-being there. Further, the applicant asserts that due to her husband's long work hours as a retina specialist and surgeon, he would have great difficulty raising his two small children on his own.

This matter arises in the Seattle Field Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Based on the evidence on the record, the AAO concludes that the applicant's husband would suffer extreme hardship due to separation from the applicant and separation from his children or difficulty raising the children on his own if they remained in the United States without the applicant.

The record further indicates that the applicant's spouse would experience hardship were he to relocate to Morocco with the applicant. The applicant's spouse has never lived in Morocco, and has no ties or connections in Morocco. The applicant's spouse is only able to speak the English language, and he is unable to speak Arabic or French, the common languages of Morocco. The applicant's attorney contends that the applicant's spouse has deep financial ties in the United States through his professional specialty. Documentation on the record indicates that he would be unlikely to find employment as a physician in Morocco due to the language barrier and restrictions on foreign physicians in obtaining licenses and employment in public medical facilities. Thus, based on the evidence on the record, the applicant has established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Morocco to reside with the applicant.

The AAO finds that the situation presented in this application, in the aggregate, rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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, "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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant were to reside in Morocco, regardless of whether he accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; letters

of reference written by relatives of the applicant's spouse; and the passage of more than ten years since the applicant arrived in the United States. The unfavorable factors in this matter are the applicant's misrepresentation of her immigrant intentions before the U.S. Consular Officer in Morocco.

The immigration violation committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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