



U.S. Citizenship
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Date: **APR 24 2012** Office: WASHINGTON DC FIELD OFFICE 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:

[REDACTED]

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, Washington DC Field Office, 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 U.S. citizen and 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 July 27, 2009.

On appeal, the applicant claims that United States Citizenship and Immigration Services (USCIS) failed to consider some of the extreme hardship factors raised in his waiver application. *Form I-290B*, filed August 27, 2009.

The record includes, but is not limited to, statements from the applicant and his wife; letters of support for the applicant and his wife; medical documentation for the applicant's wife; financial documents; household, utility, and medical bills; articles on crime and natural disasters in El Salvador; and other country-specific documents on El Salvador. 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.
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- (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 the applicant applied for and received temporary protected status (TPS) by misrepresenting his date and manner of entry, because he otherwise was not eligible for TPS. 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 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 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. 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 an undated statement submitted with the appeal, the applicant’s wife states she is suffering emotional and psychological hardship with physical manifestations. In a clinical evaluation dated September 10, 2009, [REDACTED] reports that the applicant’s wife developed depression and anxiety after suffering severe emotional and physical abuse as a child, and she began receiving therapy at thirteen years old. [REDACTED] also reports that the applicant’s wife has suffered from depression and anxiety throughout her adult life, and stress makes her symptoms more severe. The applicant’s wife claims that she suffers from “back pain, teeth pain and constant stomach aches.” She also claims that she developed a stomach ulcer. The record includes evidence that the applicant’s wife was prescribed medication for her stomach conditions and an x-ray of her teeth. The applicant’s wife states she has “faith in the medical capabilities of the United States and [her] doctors,” and the thought of trying to seek medical treatment in El Salvador “gives [her] nightmares.” The applicant’s wife also states the thought of moving to El Salvador is causing her anxiety because of all of the violence and crime, and the earthquakes and hurricanes. The AAO notes that the applicant submitted articles on the crime and violence in El Salvador, and on earthquakes in El Salvador.

The applicant’s wife states even though the minimum wage was increased, the “income earning situation in El Salvador [is] not the best.” She states that based on their areas of work, she and the applicant will likely earn less than \$600.00 a month. She claims that medical treatments will be unaffordable on \$600.00 a month. In an undated statement from the applicant, he states he also sends

money to his family in El Salvador. The applicant's wife states she is close to her mother and brother, and if she moved to El Salvador she could not afford to travel to the United States to visit her family.

The AAO acknowledges that the applicant's wife is a U.S. citizen and that she has been residing in the United States for many years. Based on the record as a whole, including the applicant's spouse's medical conditions, her lack of ties to El Salvador, the country conditions in El Salvador, her separation from her family in the United States, financial issues, and her mental health issues, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in El Salvador.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, in a statement dated April 8, 2009, the applicant's wife states if the applicant is removed to El Salvador, "the separation will cause [her] extreme emotional hardship." [REDACTED] reports that the applicant's wife has a stomach ulcer, she suffers from insomnia, and she is exhibiting moderate symptoms of depression and anxiety, including but not limited to, poor concentration, irritability, crying spells, feelings of hopelessness, and ruminative thoughts. [REDACTED] states the applicant's wife has major depressive disorder. The record establishes that the applicant's wife was prescribed medication for her insomnia and stomach aches. The applicant's wife states she cannot afford her medical and dental treatments without the applicant's help and support.

The applicant's wife states that as a result of her mother's company becoming inactive, she is currently unemployed, her mother resides with them, and the applicant's income is the "only reliable source of income [they] have." [REDACTED] reports that the applicant's wife has been "unsuccessful in her attempts to find a job in her field." The applicant's wife states that without the applicant's income, she will lose everything, including their home. She also claims that she has already lost two homes to foreclosure. The applicant provided a list of their household expenses totaling \$2,977.38 a month. The applicant's wife states, and the evidence accompanying the appeal confirms, that they are already late in paying various bills, and some have gone into collection.

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her medical, emotional, 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.

However, the AAO finds that the applicant does not merit 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 and mitigating factors in the present case are the applicant's United States citizen wife, the extreme hardship to his wife if he were refused admission, and the letters of support. The adverse factors are the applicant's misrepresentations, unauthorized employment, and unlawful presence in the United States. Additionally, the record establishes that the applicant was employed by [REDACTED] which was involved in filing fraudulent labor certification petitions with the Department of Labor and I-140 petitions with USCIS. The record shows that the applicant assisted aliens with applying for immigration benefits to which they were not entitled. The AAO finds that when taken together, the adverse factors in the present case outweigh the favorable factors; therefore, the AAO denies the applicant's waiver application on discretionary grounds.

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.