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

H5



DATE: **APR 27 2012** OFFICE: VERMONT SERVICE CENTER

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.

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 Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt who last attempted to enter the United States in August 2005 pursuant to a nonimmigrant visa. He 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. He 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 U.S. Citizen spouse.

The Center Director concluded that although the applicant had shown his spouse would experience extreme hardship upon relocation to Egypt, he did not merit a favorable exercise of discretion and denied the application accordingly. *See Decision of Center Director* dated January 14, 2010.

On appeal, counsel for the applicant submits a brief in support, copies of infopass appointments, copies of sections of the Adjudicator's Field Manual, and correspondence with USCIS. In the brief, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he did not possess the requisite intention to deceive when filling out his immigrant visa paperwork, he disclosed his prior removal to the consulate at his immigrant visa interview, and any misrepresentation was not material. Counsel contends in any event, the applicant has shown his spouse would experience extreme hardship given his inadmissibility and warrants a favorable exercise of discretion.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, statements from the applicant and his spouse, other applications and petitions filed on behalf of the applicant, letters from family, friends, and community members, documentation of removal proceedings, medical and financial records, evidence of country conditions in Egypt, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

- (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 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 [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 reflects that the applicant obtained a nonimmigrant visa in the name of [REDACTED] and used it to procure admission to the United States on September 27, 1991. The applicant was placed in deportation proceedings after his period of authorized stay expired, and an *in absentia* order of deportation was entered on June 8, 1994. The applicant was deported to Egypt on December 8, 1997, and was made aware that he was barred from admission into the United States for 10 years pursuant to section 212(a)(9)(A)(ii) of the Act. The applicant then obtained a nonimmigrant visa on March 22, 2001 in the name of [REDACTED] without disclosing his prior removal. He was admitted to the United States on May 3, 2001 pursuant to that visa. The applicant obtained another nonimmigrant visa on July 11, 2001, again in the name of [REDACTED] and without disclosing his prior deportation. He used this visa, valid for multiple entries until July 8, 2006, to gain admission into the United States on August 29, 2004. The applicant applied for an immigrant visa in Montreal, Canada, pursuant to an approved Form I-130 Petition for Alien Relative. He failed to disclose his prior deportation during the initial interview, but during a subsequent interview described his prior time in the United States and his deportation.

Counsel's contention that the applicant is not inadmissible based on representations he made during his nonimmigrant visa application is not supported by the record.¹ The applicant first assumed another name, [REDACTED] for his 1991 nonimmigrant visa, was ordered deported under that name on June 16, 1994, and was ultimately deported on December 8, 1997. However, the applicant admits that with respect to his last nonimmigrant visa application in 2001, "Unfortunately and now to my regret, yes I did indicate no when application asked if I had been to [the United States] before... I knew if I had indicated that I had been deported from the US, no country would allow me entrance." *Applicant's statement*, July 14, 2008. Moreover, counsel's assertion that this misrepresentation was retracted at the nonimmigrant visa interview is contradicted by the applicant's own statement, in which he indicates, "I was issued a 5 year US visa, which I did not go to the embassy in person [for], I simply mailed in the application and my current passport and fees and they returned it with the 5 year visa." *Id.*

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has

¹ It is unclear which nonimmigrant visa application counsel references, as the applicant obtained three nonimmigrant visas in the name of [REDACTED]

held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

.....

(i) Other aliens.-Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

Counsel erroneously asserts that even if there was a misrepresentation, it was not material, because if he had disclosed the deportation, he would not be inadmissible under section 212(a)(2)(A)(i) of the Act. The AAO notes that his deportation is not relevant to whether the applicant is inadmissible for having committed a crime of moral turpitude under section 212(a)(2)(A)(i) of the Act. However, at the time he applied for these nonimmigrant visas in 2001, the applicant remained inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act as he had not yet spent 10 years outside the country after his December 8, 1997 deportation. The applicant's misrepresentation, made in connection with an application for a visa, was material, because he was excludable on the fact that under another identity he was deported from the United States within the last 10 years.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme

hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

The applicant's spouse asserts that she experiences medical and psychological difficulties. She explains that she has chronic obstructive pulmonary disease (COPD), perhaps due to her job as a nail technician, as well as chronic sinusitis, chronic pelvic inflammatory disease, endometriosis, and mononucleosis induced hepatitis. Medical records are submitted in support, and a physician confirms in letters that she has depression, anxiety, and panic attacks, as well as a history of COPD, mono-induced hepatitis, and adhesive capsulitis. A letter from a clinical social worker indicates that the applicant's spouse experiences depression, panic and anxiety attacks, and takes Lexapro. The letter adds that the applicant's spouse expressed extreme concern over possible termination of her business due to health concerns.

The applicant's spouse explains that she owns her own business as a nail technician, which she may have to quit given her medical issues. She asserts that having the applicant in the United States would make this easier for her as he could earn a living and support them. A job offer letter is submitted, showing that the applicant would make \$620.00 a week plus commissions. The spouse adds that she has some financial obligations due to student loan debt owed, credit card debt, and assistance towards her adult daughter. U.S. Federal income tax returns are submitted as evidence of income, and a student loan statement and a credit report are submitted to show her expenses and debt.

The spouse further indicates that she would experience extreme hardship upon relocation to Egypt. She contends that she would be unable to receive adequate medical treatment for her conditions in Egypt, and she would not be able to find employment given her skills as a nail technician in Egypt, and the fact that she does not speak or understand the Arabic language. She explains that she was born in the United States, not in Egypt, and has no ties to that country. The applicant's spouse states that she has several family ties in the United States, including her adult daughter, her large family with several siblings, including a twin sister, to whom she is very close. The spouse adds that she would worry about her safety in Egypt, as well as her ability to practice her Christian faith in a predominantly Islamic country. Evidence of country conditions is submitted in support.

Although the record establishes that the applicant's spouse has some medical issues, including COPD and adhesive capsulitis, it is unclear whether other issues have been resolved, or whether they require continuing treatment. The record contains copies of medical records for the applicant's spouse as well as two letters from the spouse's physician. However, the physician

does not describe the severity of the spouse's medical condition, nor is there a description of the treatment or family assistance needed. Absent this explanation, the AAO is unable to determine the treatment needed or the difficulties the spouse will face given separation from the applicant.

The record contains evidence of financial difficulties given the present separation. The spouse's credit report indicates that she has had several accounts go into debt collection, and she has had a judgment against her in connection with repossession of a vehicle. Furthermore, the spouse's 2005 U.S. Federal Income tax returns show that she makes less than 100 percent of the minimum income requirement for an affidavit of support. *Form I-84P, HHS Poverty Guidelines for Affidavit of Support*, March 1, 2012. The record contains a job offer letter for the applicant, demonstrating that he would be able to assist her financially if he could reside in the United States.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

The record reflects that the applicant's spouse experiences some psychological difficulties in addition to financial hardship. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Egypt without his spouse.

With respect to relocation to Egypt, the AAO finds that the record contains sufficient evidence to show the applicant's spouse would experience extreme hardship in that scenario. The AAO notes that the applicant's spouse was born in the United States, has no ties to Egypt besides the applicant, does not speak Arabic, and has family and economic ties in the United States. The spouse's concerns about safety and security issues are supported by the U.S. Department of State's travel alert, which indicates that sporadic unrest and violent clashes have occurred due to the political situation, and specifically, the upcoming election. *U.S. Department of State travel alert, Egypt*, March 29, 2012. Additionally, the applicant's spouse has shown that she has some medical difficulties, and that medical care in Egypt may be insufficient for her needs. Given the evidence of record, the AAO finds that the financial, familial, and other impacts of relocation to Egypt are in the aggregate above and beyond the hardships normally experienced by relatives of inadmissible aliens.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme

hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 U.S. Citizen spouse as required under section 212(i) of the Act.

Furthermore, even if the applicant had shown his qualifying relative would experience extreme hardship in the scenario of separation as well as relocation, the AAO further finds that the applicant's spouse fails to warrant a favorable exercise of discretion. Counsel asserts that aside from his arrest, the applicant's record is clean, and he is an individual of impeccable moral character, as evidenced in letters from family and friends. While the AAO considered this evidence, we find that the applicant's long history of immigration violations, as well as his two arrests for larceny which resulted in convictions for disorderly conduct, outweigh the positive factors in this case. The applicant first used the name [REDACTED] to obtain a nonimmigrant visa to the United States, which was not his true name. The applicant then failed to appear at an immigration interview and his deportation hearing. After he was deported, he obtained nonimmigrant visas without disclosing his past time or deportation in the United States. The applicant admitted he did so knowingly, stating that if he had disclosed this, he would not be able to obtain visas to the United States or elsewhere. The applicant's immigration history reveals a pattern of dishonesty over a significant period of time. Moreover, the applicant admits that although one arrest for petit larceny occurred because of a misunderstanding, the second arrest happened because he wanted to leave the store without paying. These actions are significant negative factors which cannot be overlooked. Given his conduct leading to these arrests and the applicant's long history of immigration violations, the AAO cannot find that the favorable factors outweigh these negative factors for a favorable exercise of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.