

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: Office: TAMPA, FLORIDA

FILE: 

IN RE: 

APR 27 2012

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,

61 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Tampa, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Algeria 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 having procured admission into the United States by fraud or willful misrepresentation on June 21, 2008. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The record indicates that on June 6, 2008, during the applicant's visa interview at the U.S. Consulate in Paris, France, the applicant stated that he was traveling to the United States for three weeks to visit a married friend of the family who was a legal permanent resident and was married to a U.S. citizen. The district director also found that the applicant stated he would be staying with a [REDACTED] and that she would be paying for his trip. On June 11, 2008 the applicant's visa was approved and on June 21, 2008 he was admitted to the United States as a B2 visitor at the Tampa Bay International Airport with an authorized stay until September 5, 2008. On August 28, 2008 the applicant married the former [REDACTED], now [REDACTED] a U.S. citizen, and on October 27, 2008 his spouse filed an Alien Relative Petition (Form I-130) on his behalf. The Form I-130 was filed concurrently with an Application to Register Permanent Residence or Adjust Status (Form I-485). The Form I-130 was approved on March 12, 2008.

In a decision, dated September 29, 2009, the district director found that the applicant had misrepresented his immigrant intentions when he applied for a nonimmigrant visa, entered the United States as a nonimmigrant, and then married a U.S. citizen. The district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The district director also found that the applicant had not shown that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility and denied the application accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated October 26, 2009, counsel states that the applicant did not make a misrepresentation when he entered the United States as a nonimmigrant and then married a U.S. citizen. Counsel states that the interviewing consular officer must have misunderstood the applicant during his visa interview and that when he entered the United States he did not plan to marry his friend and did not plan to stay for more than three weeks, but that subsequent circumstances caused him to change his intended plans. Counsel states that the applicant has not made a misrepresentation, and therefore the waiver application is moot.

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

- (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.

The AAO finds that there are two possible misrepresentations in the applicant's case. The first occurring during his visa interview when the applicant stated to the consular officer that the person he would be visiting in the United States was a friend of the family, and a lawful permanent resident married to a U.S. citizen, when in fact the woman had not been married since 1997 and he had become acquainted with her only recently via the internet. The applicant's second possible misrepresentation occurred when he entered the United States as a nonimmigrant, but had undisclosed immigrant intent, as manifested by his marriage to a U.S. citizen and seeking permanent residence.

The AAO finds that the misrepresentation of his now wife's prior marital status and the nature of their relationship is a material misrepresentation and renders the applicant inadmissible under section 212(a)(6)(C) of the Act. According to the Department of State's Foreign Affairs Manual, 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 that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61*. 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 US 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) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

The Department of State Foreign Affairs Manual states:

With limited exceptions, all visa applicants are presumed to be immigrants (and thus not eligible for a nonimmigrant visa (NIV)) unless and until they satisfy you that they qualify for one of the NIV categories defined in INA Section 101(a)(15). Per Section 291 of the INA, the *burden of proof* is at all times on the applicant, which means the applicant must convince you that he or she is entitled to the requested visa. Otherwise, the alien must be considered to be an applicant for immigrant status and cannot receive an NIV.

DOS Foreign Affairs Manual, § 40.7 N1.1

The Department of State Foreign Affairs Manual also states:

- (1) In determining whether visa applicants are entitled to temporary visitor classification, the consular officer must assess whether the applicants:
 - (a) Have a residence in a foreign country, which they do not intend to abandon;
 - (b) Intend to enter the United States for a period of specifically limited duration; and

(c) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.

(2) If an applicant for a B1/B2 visa fails to meet one or more of the above criteria, you must refuse the applicant under section 214(b) of the INA.

DOS Foreign Affairs Manual, § 41.31 N1.

The consular officer's notes indicate that the following information was used in the decision to grant the applicant a NIV: the applicant was enrolled in a Master's of Psychology program in France, he worked at the university where he was enrolled, he planned to travel to the United States for three weeks, and that he was to visit a married family friend.

Based on the current record, the AAO finds that the applicant's misrepresentation shut off a line of inquiry that might well have resulted in a valid discretionary determination that his nonimmigrant visa application be denied. Had the applicant told the truth concerning his intent to visit an unmarried woman, who, rather than being a married family friend, was a romantic interest 40 years his senior and of recent acquaintance, the consular officer might well have determined that the applicant, who also had no permanent right to remain in France, lacked nonimmigrant intent.

Therefore, the AAO finds that the applicant's misstatements concerning the individual he intended to visit briefly in the United States, who he subsequently married, and the nature of their relationship at that time, are material misrepresentations, and the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) 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.

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-Moralez*, 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.

The AAO notes that the record does not include any hardship claims. The burden of proof in this proceeding lies with the applicant, and “while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts.” *Matter of Ngai*, 19 I&N Dec. at 247. Thus, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of his inadmissibility. Having found the applicant statutorily ineligible for relief, 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.