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



**U.S. Citizenship  
and Immigration  
Services**



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DATE: **AUG 14 2012**

Office: **NEW YORK, NY**

FILE: 

IN RE: 

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,

  
Perry Chew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Indonesia 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 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 Petition for Alien Relative. 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 her U.S. citizen spouse.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated July 30, 2010.

On appeal, the applicant claims that the director's finding was erroneous as a matter of fact and law, arbitrary and capricious, and without legal merit. *See Form I-290B, Notice of Appeal or Motion*, received on August 26, 2010. The applicant's counsel also submits additional evidence for consideration.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant, her spouse, her spouse's family, and friends; medical documentation; financial documents; copies of relationship and identification documents; country conditions reports about Indonesia; and family photographs. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record indicates that the applicant entered the United States on August 28, 1998 with an Indonesian passport and a nonimmigrant visa that she obtained with an assumed name, [REDACTED]. The applicant has not departed the United States since her 1998 entry. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

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). The applicant's qualifying relative is her spouse, who is a U.S. citizen.

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, 631-32 (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, “[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., In re 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 now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel states that the applicant’s spouse is “completely reliant” on the applicant for physical, mental, and emotional support, and separating from the applicant would cause extreme hardship to him because the bar to her admission is permanent. Counsel states that the applicant’s spouse’s “extreme mental anguish” will become worse with a “forced separation” from the applicant. Counsel also states that the applicant’s spouse cannot relocate to Indonesia because of his age, his degenerative diseases, the unavailability of adequate medical care, and his unfamiliarity with Indonesia’s languages and customs. Moreover, he has an established business in the United States. Counsel also asserts that the applicant’s spouse would be subjected to anti-American sentiments in Indonesia.

The applicant’s spouse states that his physical condition is getting worse and he is in daily pain. He has no one else to care for him; therefore, he needs the applicant to assist him and alleviate his pain. He has been in therapy for separation anxiety, which started with his mother’s extended absences during his childhood. He states that the “fear of separation...is more than [he] can comprehend or handle.” He is “constantly depressed and worried.” He states that his inability to cope with his father’s death pushed him to substance abuse, with which he struggled for many

years. The applicant provides him with the love and support he needs to cope. He states that relocating to Indonesia also would cause him extreme hardship, because he is not a native of Indonesia and does not speak the language. He is concerned about not receiving adequate health care in Indonesia and not being able to establish a business there. He is a stock broker and in the process of establishing a partnership; he cannot rebuild his career in Indonesia. Given his age, medical condition, and his past addiction, he fears that he will not be able to start a new life in Indonesia. He explains the strength of his family ties and is worried about not being able to care for his mother and aunt who are in their 70s and live alone. He also expresses "extreme fear" about living in Indonesia as a [REDACTED]

In his April 2012 follow-up report, [REDACTED] a licensed psychologist, indicates that the applicant's spouse has been in individual psychotherapy treatment for depression and anxiety. The applicant's spouse continues to experience insomnia, depressed mood, anxiety, disturbances in his memory and concentration, and feelings of helplessness and hopelessness. According to [REDACTED], the applicant's spouse's "depression and anxiety remain quite strong" and his "depression will worsen and his functioning would deteriorate further, perhaps permanently" if he is separated from the applicant. The record also contains a 2007 psychological evaluation by [REDACTED] Reich, in which he indicates that during the interview, the applicant's spouse was terrified about the possibility that he might separate from the applicant. His symptoms included sleep disturbance, poor appetite, chronic anxiety, and suicidal ideation. According to [REDACTED] the applicant's spouse developed separation anxiety during his childhood, and he has not overcome it. His first wife's infidelity exacerbated his sense of vulnerability and lack of trust. [REDACTED] states that if the applicant's spouse separates from her, his depression will escalate and he will be vulnerable to binge drinking and cocaine abuse.

In an April 2012 letter, [REDACTED] indicates that in January 2012, the applicant's spouse was hospitalized for an acute onset of chest pain and angina pectoris. According to [REDACTED] the applicant's spouse is being treated with an antidepressant and his prognosis is "guarded." The applicant assists him with his daily care and management of his chores. The applicant's spouse's diagnoses include migraine, degenerative joint disease of the cervical spine, generalized anxiety, chronic shoulder pain with a partial supraspinatus tear with impingement, chronic insomnia, and systolic murmur. According to [REDACTED] relocating to a foreign country would worsen his conditions. [REDACTED] indicates that the applicant's spouse has multiple herniated discs with right upper extremity numbness, tingling and weakness. [REDACTED] states that the applicant's spouse is partially disabled and needs assistance in his daily activities.

[REDACTED], the applicant's spouse's sponsor at Alcoholics Anonymous, states that the applicant's spouse had shared with him that the emotional pain and sadness caused by his father's death and his unsuccessful first marriage were the triggers for his substance abuse. If the stability in the applicant's spouse's life is destroyed, he "might restart his old way of life." The applicant's mother-in-law states that the applicant's father-in-law died suddenly from a heart attack when he was 49 years old. The applicant's spouse was 26 years old at the time and had difficulty coping with his father's death. The applicant's brother-in-law states that the applicant's spouse had

struggled with drug addiction in dealing with life's challenges, and losing the applicant would constitute an extreme hardship to him.

In support of assertions of inadequate health care in Indonesia, the applicant submitted a 2010 letter from U.S. citizen [REDACTED] who describes her first-hand experience with the healthcare system in Indonesia. The record also contains articles detailing numerous problems with the healthcare system in Indonesia.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship resulting from separation. In reaching this conclusion, we note the applicant's spouse's most recent hospitalization for chest pain and his guarded prognosis. The applicant's spouse also has degenerative joint disease; he needs and relies upon the applicant's assistance in his daily care. He is also being treated for depression and needs the applicant's emotional support. Furthermore, the record demonstrates that the applicant's spouse has separation anxiety and inadequate coping skills to overcome such stress. His past history of substance abuse makes him vulnerable to triggers caused by emotional pain and stress; separating from the applicant would increase his likelihood of relapse.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Indonesia. We note that the applicant's spouse is not a native of Indonesia and has no family there. Also, he is not proficient in Indonesian. Evidence submitted corroborates the applicant's spouse's assertion that he would not receive adequate medical care in Indonesia. Furthermore, the record demonstrates that he is unable to cope with emotional challenges that would occur upon his relocation. His substance abuse could recur with disruption of his stable environment and his treatments. He has close family ties in the United States and an established business. Given his age, medical and psychological conditions, and his inability to speak the native language it would be extremely difficult for him to start a new business and establish a life in Indonesia. The AAO also notes the safety concerns raised by counsel and the applicant's spouse. The U.S. Department of State's country specific information on Indonesia, last updated on November 2, 2011, indicates that extremists carry out violent attacks with little or no warning, in one instance targeting a house occupied by U.S. citizens.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of her inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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*, 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 are the applicant's fraud or material misrepresentation to obtain admission to the United States, for which she now seeks a waiver, and her employment without authorization. The mitigating factors include the applicant's U.S. citizen spouse; the extreme hardship to her spouse if the waiver application is denied; the absence of a criminal record of the applicant; and the applicant's length of residence in the United States.

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

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.