

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



115

DATE: **AUG 16 2012** OFFICE: NEW YORK

FILE:



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bulgaria 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), due to her use of fraud or material misrepresentation to procure a visa to the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. lawful permanent resident spouse.

In a decision dated March 15, 2010, the District Director concluded that the applicant did not meet her burden of proof to illustrate that her spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i), and, if it is determined that she is, the hardship that would result to the applicant's U.S. lawful permanent resident spouse is extreme.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, statements from the applicant's spouse, a statement from the applicant's daughter, biographical information for the applicant and her spouse, biographical information for the applicant's daughter, a psychiatric evaluation of the applicant's spouse, a letter from the applicant's spouse's physician, tax returns and employment information for the applicant's daughter, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility. 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.

...

A misrepresentation is generally material only if by making it the alien received a benefit for which she 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 must be shown by clear, unequivocal,

and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has 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).

The U.S. Department of State determined that the applicant presented false information in connection with her visa application. The record indicates that although the applicant was issued a B2 visitor visa on May 31, 2001 at the U.S. Consulate and was admitted to the United States using that visa on June 17, 2001, the U.S. Department of State made the determination on June 29, 2001 that a letter of invitation submitted by the applicant in support of her visa application was fraudulent. The applicant has not presented any documentation to illustrate that she did not in fact submit a fraudulent invitation letter in support of her visa application in 2001. Additionally, the fact that the applicant was admitted to the United States using the visa, prior to the determination that fraudulent evidence had been submitted in support of the visa, does not preclude her inadmissibility under section 212(a)(6)(C)(i), as counsel suggests. As the fraudulent invitation letter submitted by the applicant in connection with her visa application was directly relevant to the applicant's eligibility for the visa, the misrepresentation was material. The applicant has not met her burden of proof to illustrate otherwise. In proceedings for an application for 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. As such, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states that:

- (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 the applicant's U.S. citizen or lawful permanent resident spouse or parent. The applicant has a U.S. lawful permanent resident spouse. Hardship to the applicant, her child, or her grandchild is not considered in section 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative. 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 deportation, 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, 885 (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.

On appeal, counsel for the applicant states that the applicant's spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. The applicant's spouse states that he relies on his spouse for assistance with his medical condition as well as for his emotional well-being. In support of that statement, the applicant's spouse submitted a psychiatric evaluation and doctor's letter. The letter from [REDACTED] D.O, dated April 29, 2010 states that the applicant's spouse had been under that doctor's care since an undisclosed date in 2010. [REDACTED] states that the applicant's spouse's "current diagnoses are: hyperlipidemia, hypertension, degenerative disc disease, fatigue, and arrhythmia" and he has been prescribed Atenalol, Lipitor, and Ramipril. It is not clear from the record whether the applicant's spouse had been seeing a doctor for his medical conditions prior to the denial of his spouse's waiver application. Additionally, the doctor does not note the role that the applicant plays in assisting with her spouse's medical care. [REDACTED] also states that the applicant's spouse was seen by a cardiologist, and that further tests were ordered, but the results were not yet available. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record; however, is insufficient to establish the severity of her spouse's condition. Absent an explanation from the treating physician of the exact nature and severity of the applicant's spouse's conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The record also fails to establish that the applicant is instrumental in the success of her spouse's medical care. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, the applicant's spouse was evaluated by [REDACTED] D.O., a psychiatrist, on April 4, 2010. [REDACTED] states that the applicant's spouse reported to him that he had been hospitalized in Bulgaria for "arrhythmia and coronary artery disease" after the applicant left Bulgaria in 2001. The applicant's spouse also stated that after his daughter left to the United States, in an undisclosed year, his medical condition again deteriorated along with his depression. The applicant's spouse; however, did not provide any medical records to support that assertion. As stated above, the applicant's spouse's statements are relevant and have been taken into consideration, but little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. at 175. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Based on the applicant's spouse's descriptions of his behavior since hearing of the applicant's waiver denial, which occurred less than one month prior to the interview, [REDACTED] stated that the applicant's spouse's suicidal risk was "moderate-to-severe." The AAO notes that this is cause for concern; however, the doctor noted that the applicant's spouse received "enormous" support from his family and was not being recommended for involuntary admission to a medical facility. [REDACTED] also states that the applicant reported that a cardiologist recently found "abnormalities of his heart," yet documentation from the cardiologist is not part of the record. [REDACTED] also reports that the applicant's spouse is "completely dependent on his wife to function," but no examples of this dependence were provided in the record. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure hardship as a result of long-term separation from the applicant, the evidence in the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme."

Counsel does not state what hardship the applicant's spouse would suffer if he were to relocate to Bulgaria to reside with this spouse. In their statements, the applicant's spouse and the applicant's daughter express the important role that the applicant plays in her daughter, and especially her grandson's life; however, Congress did not include hardship to children or grandchild as part of the determination for a waiver of inadmissibility under section 212(i) of the Act. The applicant must illustrate how hardship to her child or grandchild would affect her qualifying relative – her spouse. The applicant's spouse is a native of Bulgaria who resided in that country until 2004. Although the applicant's spouse states that in Bulgaria he suffered from the same medical conditions that he now reports, he does not state that he was unable to obtain medical attention for his conditions there. As stated above, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record; however, is insufficient to establish the severity of the applicant's spouse's conditions or that his

conditions are not treatable in Bulgaria. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. The record establishes that the applicant's spouse has a close relationship with his U.S. citizen daughter, but there is no indication why the applicant's spouse would not be able to maintain a relationship with his daughter if he were to relocate to Bulgaria. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Bulgaria, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship." Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for 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.