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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**



HLS

Date: **AUG 20 2012**

Office: **MOSCOW, RUSSIA**

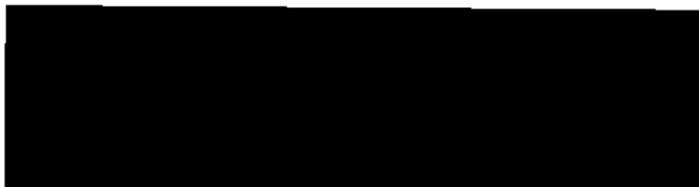
FILE: 

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 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 Field Office Director, Moscow, Russia, 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 Armenia 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the mother of an Armenian citizen child. She 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 her spouse and child.

The Field Office Director found that the applicant 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 August 17, 2010.

On appeal, the applicant, through counsel, claims that the applicant's husband would suffer extreme hardship if the applicant is denied entry into the United States and he has to relocate to Armenia. *See counsel's appeal brief, attached to Form I-290B, Notice of Appeal or Motion*, filed September 17, 2010.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's husband and her in-laws, medical documents for the applicant's husband, employment documents for the applicant's husband, photographs, phone bills, country-conditions documents on Armenia, and documents pertaining to the applicant's expedited-removal proceeding. 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) 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.

.....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (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.

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 the present case, the record indicates that on March 11, 2002, the applicant attempted to enter the United States by presenting a U.S. refugee travel document in someone else's name. On March 12, 2002, the applicant was expeditiously removed from the United States. Based on this misrepresentation, 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 first 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 or her daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's daughter will not be separately considered, except as it may affect the applicant's spouse.

In a letter dated March 12, 2010, the applicant's husband claims that leaving the United States would affect him economically, emotionally, and socially. He has no family ties to Armenia, he has lived in the United States since he was 11 years old, and he cannot "leave everything [he has] achieved" in the United States to move to Armenia. Counsel also states that the applicant's husband has never worked or lived in Armenia. In a statement dated March 12, 2010, the applicant's husband states all of his family resides in the United States, including his elderly father who is in poor health. In statements dated March 11, 2010, the applicant's father-in-law and mother-in-law state they both suffer from arthritis and high blood pressure, and they could not travel to Armenia because of their health conditions. The applicant's husband states it is very difficult for his father to leave the house, and he can only walk short distances with a walker.

The applicant's husband states that he has a "great" job in the United States with promotion potential, but that his work-related knowledge would not be transferable to a similar position in Armenia. He states he and his family "would be deprived of the basic necessities of life," as poverty and unemployment are widespread problems in Armenia. He claims that he attempted to find employment in Armenia but was unsuccessful because of his American citizenship and his inability to speak Armenian well. He states the money they would make in Armenia would barely cover the cost of food, and they could not afford healthcare, a good education for his stepdaughter and future children, or to travel back to the United States to visit his family. He states that he is very close with his parents, and he would suffer emotionally by not being able to see them. Additionally, counsel claims that the applicant's husband would suffer emotionally because of the general Armenian country conditions. The applicant's husband states that in Armenia there are serious human rights abuses and great incidences of crime, including human trafficking, and he worries that his family would be subjected to human trafficking. Country-conditions documents were submitted in support of the applicant's husband's and counsel's claims.

The AAO acknowledges that the applicant's husband, who is Armenian but born in Lebanon, has resided in the United States for many years and that relocation abroad would involve some hardship. However, it has not been established that he cannot communicate in the native language or that he is unfamiliar with the customs and cultures of Armenia. Though the applicant's husband's security concerns about Armenia are corroborated by country-conditions documents, these documents alone do not support a finding of extreme hardship to the applicant's husband should he join the applicant in Armenia. Additionally, although it may be difficult for the applicant's husband to be apart from his parents, the record lacks documentary evidence showing that this hardship would be extreme. Regarding the hardship that the applicant's daughter may be experiencing in Armenia, she is not a qualifying relative under the Act, and the applicant has not shown that hardship to her daughter has elevated her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Armenia.

In addition, the record fails to establish extreme hardship to the applicant's husband if he remains in the United States. The applicant's husband states he has been under a lot of stress and he cannot sleep. In a statement dated March 9, 2010, Mr. [REDACTED] the applicant's husband's employer, states the applicant's husband is sad and depressed about the applicant's immigration issues. In a statement dated September 10, 2010, Dr. [REDACTED] diagnosed the applicant's husband with severe depressive disorder with psychotic features, "as well as fibromyalgia, etc." He prescribed medications but he reports that there has been "only slight improvement in his condition." The applicant's mother-in-law states her son's depression is affecting his job and his relationships with his family and friends. Counsel claims that the applicant's husband's work performance has suffered, and Dr. [REDACTED] reports that his health condition makes it "impossible" for him to continue his regular job duties.

The AAO acknowledges that the applicant's husband may be suffering some emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional

hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Though statements were made referring to the applicant's husband's work performance suffering, Mr. [REDACTED], the applicant's husband's employer, did not indicate that this was the case. The AAO notes that no other claims were made, and based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 her U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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.