

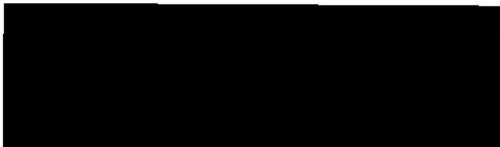
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



HLS

DATE **AUG 28 2012** OFFICE: OAKLAND PARK, FL



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.

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
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the Field Office Director, Oakland Park, Florida, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Argentina 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 attempting to procure an immigration benefit by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen and he 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 remain in the United States with his spouse.

In a decision dated June 2, 2010, the director determined the applicant had failed to establish that a qualifying family member would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, counsel asserts that the director failed to consider the totality of the hardship factors in the applicant's case, and that the evidence establishes the applicant's wife would experience extreme emotional and financial hardship if the applicant were denied admission into the United States. In support of these assertions counsel submits letters from the applicant's wife and family members, employment and financial documentation, psychological and medical evidence, photographs and evidence establishing relationships and identity. 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 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.

A misrepresentation must be made with knowledge of its falsity to be willful. The willful misrepresentation of a material fact must be made to an authorized official of the government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

In the present matter, the record reflects that on March 29, 2006, the applicant filed a boilerplate asylum application prepared by an individual found guilty of conspiracy to commit visa and mail fraud, in connection with the submission of fraudulent asylum applications. The applicant states on his waiver application that he was unaware someone fraudulently used his information to file for asylum on his behalf and that he did not authorize the filing of an asylum application on his behalf. However, the applicant submits no evidence to corroborate his assertion. Moreover, his statement is contradicted by the fact that he signed the asylum application on March 23, 2006.

The burden of proof remains with the alien to show by a preponderance of the evidence that a material misrepresentation was not committed, and that she or he is not inadmissible. Section 291 of the Act, 8 U.S.C. §1361. *See also, Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Upon review, the AAO finds the record supports the director's conclusion that the applicant sought to procure an immigration benefit through willful misrepresentation of a material fact. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides 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 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.

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-Morales*, 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*, 22 I&N Dec. 560, 565 (BIA 1999), 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. 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, supra*

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 U.S. citizen spouse is his qualifying relative under section 212(i) of the Act.

The applicant’s wife states in an affidavit that she was born in Colombia in 1989, she has lived in the United States with her family since she was five years old, and she has been a U.S. citizen since April 2009. She is close to her family in the United States, has no ties abroad, has a stable job in this country, and is a student of diagnostic medical sonography, for which she has taken out a \$30,000 student loan. The applicant’s wife also states that she and the applicant live with her mother, who suffers from rheumatoid arthritis and is losing her home to foreclosure, and they assist her emotionally, financially and with medical care.

The applicant’s mother-in-law indicates her health and financial situation is poor, her daughter and the applicant help her emotionally and financially, her daughter would have to leave school and her work if she left the United States, and she would miss her daughter and the applicant if they moved to Argentina.

Medical evidence demonstrates the applicant’s mother-in-law has arthritis in her knee and that a brace is recommended. A February 2009 apartment lease shows that the applicant and his wife

rented a room in his mother-in-law's house. A September 2009 foreclosure notice sets the property for sale on January 27, 2010.

Employment and income tax evidence reflect the applicant's wife worked full-time in 2009, earning \$400 a week. The applicant's wife completed classes in fall 2009, for an Associates of Science degree in diagnostic medical sonography. The record also includes a "projected cost and estimated financial aid worksheet" for the 2009-2010 school year, unsigned by the applicant's wife.

A psychologist diagnoses the applicant's wife with panic disorder and major depressive disorder due to the possibility of the applicant's removal, with symptoms including feelings of worthlessness, "depressed and anxious mood, irritability, panic attacks, decreased interest and energy, sleep disturbance, weight gain, difficulty concentrating, and impaired functioning at school and work." He states that the applicant's wife's symptoms would not necessarily improve with supportive therapy or medication, and that allowing the applicant to remain in the United States would be in her best interest.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. The school-loan evidence submitted on appeal consists of an estimated cost worksheet that includes no mention of a \$30,000 loan obligation. Moreover, the record contains no evidence to corroborate claims that the applicant's wife borrowed money for her education, or that she owes \$30,000 in school loans. The record also lacks evidence showing that the applicant assists her financially, or that she is dependent upon the applicant to help her financially. In addition, the evidence in the record fails to establish the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she remained in the United States. The applicant's wife has been diagnosed with panic disorder and major depressive disorder. The value of the conclusions reached in the psychological assessment is diminished, however, in that the conclusions are based on one interview with the applicant's wife. There is no indication that the evaluator independently verified the information provided by the applicant's wife, and the record lacks evidence to corroborate key information used in making the diagnoses. The record also lacks evidence corroborating conclusions that the applicant's wife has impaired functioning at work or school, or that she has suffered physically or medically due to the applicant's immigration situation. The evaluation thus fails to establish that the applicant's wife would experience emotional or financial hardship, considered in the aggregate, beyond that normally experienced upon removal or inadmissibility if the applicant is denied admission into the United States.

The AAO finds that the cumulative evidence also fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Argentina. The record fails to corroborate statements that the applicant's mother-in-law is dependent upon her daughter to care for her medically or financially, or that the applicant's wife would experience extreme emotional hardship if she were unable to provide such care to her mother. The record also lacks evidence to corroborate assertions that the applicant's wife would experience financial hardship due to her inability to repay her student loans from Argentina. The record fails to demonstrate the

applicant and his wife would be unable to find employment or that they would suffer financial hardship in Argentina. The record also lacks evidence to demonstrate that the applicant's wife is still studying or that she would have to give up her studies if she moved to Argentina. In addition, the record fails to establish that the applicant's wife would experience hardship beyond that normally experienced upon removal or inadmissibility due to her separation from her family in the United States.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.