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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

[Redacted]

HS

Date: **AUG 30 2012**

Office: CHICAGO

[Redacted]

IN RE: Applicant:

[Redacted]

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:

[Redacted]

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, Chicago, Illinois. 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 Ukraine 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 procuring admission to the United States through fraud or misrepresentation. The applicant entered the United States on December 22, 1998, with a B-1 business visitor visa to attend meetings at the Federal Reserve Bank in New York City, New York; however, the applicant never attended these meetings, and proceeded directly to Chicago, Illinois after entering the United States. The applicant does not contest this finding of inadmissibility, but rather applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. Citizen spouse.

In a decision dated March 3, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, March 3, 2010.

The record contains the following documentation: briefs filed by the applicant's attorney; statements from the applicant's spouse; medical documentation for the applicant's spouse; a psychological evaluation of the applicant's spouse; financial documentation; and letters of reference. 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:

- (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 that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's U.S. citizen wife 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-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 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.

Counsel asserts that the applicant's spouse is undergoing tremendous emotional and psychological hardship, noting that she has been seeing [REDACTED]. The record includes a psychological evaluation from [REDACTED] dated September 3, 2009, in which she diagnoses the applicant's spouse with Adjustment Disorder with depressed mood, with headaches, weakness, poor sleeping, poor appetite, lack of social support, and emotional and financial hardship. The field office director noted that there were discrepancies in the clinic evaluation which raised some doubt as to the validity of the evaluation. The discrepancies noted were that the evaluation did not include [REDACTED] license number for verification purposes, that the address for [REDACTED] was the same address as counsel, and that the evaluation was not signed. *See Decision of the Field Office Director*, March 3, 2010. On appeal, counsel states that a copy of [REDACTED] resume was attached; however, there is no copy of [REDACTED] resume in the record. Counsel also noted that license numbers are never provided, but can be looked up through official licensing bodies. According to [REDACTED] was issued a social working license on July 11, 2000, which expired on November 30, 2003, and which was not renewed.

See:

https://www.idfpr.com/licenselookup/printthispage.asp?page=1&pro_cde=0150&lnme=g&initial=&type=NAME&checkbox=on, at page 23 (accessed on August 20, 2012).

The record also includes a medical document from [REDACTED], dated September 8, 2009, which indicates that [REDACTED] had the impression that the applicant's spouse was suffering from major depression, with anxiety and panic attacks, and prescribed an anti-depressant, and recommended a psychological evaluation. The field office noted that there is no evidence that the applicant's spouse returned to see [REDACTED] for additional testing, evaluations, or treatment, as recommended by [REDACTED]. *See Decision of the Field Office Director*, March 3, 2010. On appeal, counsel states that the applicant's spouse was referred to [REDACTED], and that a psychological evaluation would be forthcoming. However, there is no psychological evaluation for the applicant's spouse from [REDACTED] contained in the record.

Counsel also asserts that the applicant's spouse would suffer financial hardship if the applicant's waiver application is not approved. The record indicates that the applicant's spouse is employed as a

dentist technician/assistant, and that her annual income in 2007 was \$10,000, and increased to \$14,000 in 2009. While the record includes copies of mortgage payments, credit card bills, and utility bills, the evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's wife is facing as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

Counsel asserts that the applicant's spouse will suffer hardship if she relocates to Ukraine to be with the applicant. Counsel asserts that all members of the applicant's wife's family are residing permanently in the United States. According to counsel's brief, the daughter of the applicant's spouse is married. The record includes a letter from the applicant's brother, indicating that he now resides in the United States. On May 1, 2008, the applicant's spouse submitted a Form G-325A, Biographic Information, which indicates that her parents currently reside in Ukraine. There is no evidence that any members of the applicant's wife's family, other than her married daughter and brother, reside in the United States. 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)).

The applicant's spouse is originally from Ukraine, thus she would not encounter any language or cultural difficulties if she were to relocate to Ukraine. Counsel contends that the applicant's spouse would not be allowed to stay in Ukraine for any significant periods of time, because of Ukrainian nationality laws. The record includes a copy of Country Specific Information for Ukraine, issued by the U.S. Department of State, which indicates that U.S. citizens planning to stay in Ukraine for more than 90 days must have visas authorizing their entry into Ukraine. There is no evidence in the record to support counsel's contention that the applicant's spouse would not be able to stay in Ukraine for significant periods of time to reside with the applicant. Counsel asserts that the applicant's spouse would not be eligible for any health care in Ukraine, and that she would not be allowed to seek any government support or relief if her life is threatened, but there is no evidence in the record to support these assertions. As noted above, 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)).

Counsel also states that there is significant crime in Ukraine, and that the applicant's wife could become a victim of crime if she relocates to Ukraine. The AAO notes that the U.S. Department of

State currently does not have any travel warnings or travel advisories for travel to Ukraine. The record includes a copy of the U.S. Department of State's Country Specific Information for Ukraine. This report states that most travelers do not encounter problems with crime in Ukraine.

Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Ukraine to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.