

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

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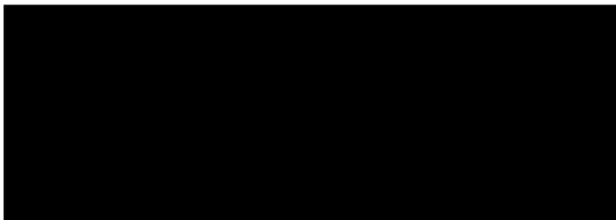
Date: DEC 03 2012 Office: SAN BERNARDINO, CALIFORNIA

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California, 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 Syria 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 willfully misrepresenting a material fact in order to obtain an immigration benefit. The record indicates that the applicant is married to a U.S. citizen and the mother of a U.S. 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 July 26, 2011.

On appeal, the applicant, through counsel, claims that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is unable to immigrate to the United States. *Counsel's appeal brief*, dated September 15, 2011. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's husband; letters from the applicant's in-laws; a psychological evaluation of the applicant's husband; financial and business documents; articles about hypertension, high cholesterol, and migraines; and country-conditions documents about Syria and Iraq. 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.

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. Hardship to the applicant or her child 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).

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 in December 2006, the applicant applied for a non-immigrant visa and submitted a counterfeit Syrian marriage certificate to a U.S. consular officer in order to enhance her ties to Syria. The applicant received a non-immigrant visa, which she used on December 22, 2006, to enter the United States. She was authorized to remain in the United States until June 21, 2007; however, she failed to depart when her authorization expired. Based on her misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her *inadmissibility*.

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

Concerning his hardship in Syria, in his declaration dated June 29, 2011, the applicant's husband claims he suffers from various medical conditions, including depression, anxiety, migraines, hypercholesterolemia, and arterial hypertension. He states that he would suffer in Syria because the country has inadequate medical facilities and lacks "adequate prescription drugs." Additionally, because he is not a Syrian citizen, he would not be provided medical benefits and would have to pay for his medical care himself. He claims that he would be unable to find work in Syria with income sufficient to allow him to support his family and pay for his medical care. Additionally, in a psychological evaluation dated June 18, 2011, Dr. [REDACTED] reports that the applicant's husband has no family ties to Syria. The record establishes that the applicant's husband was born in Iraq.

In his statement dated September 17, 2011, the applicant's husband claims that he has been designated as a service provider for his parents by the State of California; as such he provides them with in-home support services. In their statement dated September 17, 2011, the applicant's in-laws explain their health conditions and claim that the applicant's husband helps them with housecleaning, cooking, transportation, picking up prescriptions, grocery shopping, and other needs. In his statement dated September 15, 2011,

the applicant's brother-in-law states that the services provided by the applicant's husband are "essential" for their parents.

Dr. [REDACTED] reports that based on the applicant's husband's statements to her, he will lose his business if he relocates to Syria; he will be unable to manage his financial responsibilities, including the mortgage on his home; and he will be unable to afford to travel to the United States to visit his family. Additionally, Dr. [REDACTED] reports that the applicant's daughter will suffer in Syria because of the lack of opportunities, and she will live in poverty. Dr. [REDACTED] also indicates that since the applicant and her husband are Christian they would "be exposed to the terrible situation that exists between the Christians and Muslims."

The applicant's husband claims that the security situation in Syria is a concern. The AAO notes that on August 28, 2012, the U.S. Department of State issued a travel warning to U.S. citizens about the security situation in Syria, advising "against travel to Syria and strongly recommend[ing] that U.S. citizens remaining in Syria depart immediately." The warning states "the security situation remains volatile and unpredictable throughout the country, with an increased risk of kidnappings," and "[n]o part of Syria should be considered immune from violence." The warning also states that the U.S. Embassy suspended all operations in Syria in February 2012 and "therefore cannot provide protection or routine consular services to U.S. citizens."

Based on the record as a whole, including the applicant's husband's safety concerns in Syria; his medical issues and possible disruption of his treatment; his lack of health insurance in Syria; his limited employment prospects; his separation from his family in the United States, including his parents who rely on him for support; and the effect on him of the hardship to their daughter, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Syria.

Regarding the hardship caused by their separation, the applicant's husband states he is "emotionally and physically distraught." Dr. [REDACTED] diagnoses the applicant's husband with major depressive disorder, moderate, and anxiety disorder; however, if he is separated from the applicant, he could suffer major depressive disorder, severe. The applicant's husband states he is having difficulty focusing, he needs the applicant's presence to help him "manage [his] everyday life." As noted above, the applicant's husband claims he is suffering from various medical conditions. Additionally, he claims that he would worry about the applicant in Syria, because of the crime rate.

The applicant's husband states he would suffer financially without the applicant's support. He claims that he is self-employed, and it would be impossible to support the applicant in Syria and himself in the United States. Documentation in the record establishes that the applicant's husband owns his business.

The AAO acknowledges that the applicant's husband may be suffering emotional difficulties. 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 the applicant's husband also refers to financial difficulties, the evidence does not establish that the applicant's husband would be unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's

financial challenges from those commonly experienced when a family member remains in the United States. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). With respect to the applicant's husband's medical hardship, no medical documents have been submitted to corroborate claims that he suffers from medical conditions or that he requires the applicant's assistance because of his medical problems. Additionally, though the applicant's daughter may suffer some hardship in being separated from the applicant, she is not a qualifying relative, and the applicant has not shown that this hardship to her daughter will elevate her husband's challenges to an extreme level. 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.

Although the applicant has demonstrated that her husband would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.