



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **DEC 14 2012**

Office: LOS ANGELES, CA

FILE: [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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Armenia 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 seeking to procure admission into the country through misrepresentation of a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. 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.

In his decision of April 15, 2011, the field office director concluded that the applicant had failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied.

On appeal, counsel asserts the director did not take into consideration that the applicant was under the age of 17 at the time of the alleged misrepresentation; that the applicant has only one child who is three-years-old;¹ and that her spouse and child would suffer extreme hardship if she is denied entry into the United States.

The record includes, but is not limited to: counsel's brief, statements from the applicant and her husband, medical documentation relating to the applicant's spouse, psychological evaluations of the applicant's spouse and mother-in-law, photographs of the applicant and her family, country conditions information on Armenia and the applicant's unofficial college transcripts. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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).

¹ The director's decision indicates that the record reflects that the applicant had children who were of legal age (21). However, a review of the record indicates that the applicant has only one child who was two-years-old at the time of the director's decision.

The record reflects that the applicant attempted entry into the United States on March 5, 2001 by presenting a Form I-551, Permanent Resident Card, and a Form I-327, Reentry Permit, that had not been issued to her. The applicant was paroled into the United States on March 7, 2001 pursuant to section 212(d)(5) of the Act. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

On appeal, counsel questions whether the applicant as a 16-year-old could have had the requisite intent required to violate section 212(a)(6)(C)(i) of the Act and requests the AAO's opinion as to whether (6)(C) may be applied to a minor.

In light of counsel's request, the AAO will first consider if United States Citizenship and Immigration Services (USCIS) has erred in barring the applicant's admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act is violated by committing fraud or willfully misrepresenting a material fact. See *Mwongera v. INS*, 187 F.3d 323, 330 (3rd Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The BIA has found fraud to consist of "false representations of a material fact made with knowledge of its falsity and with intent to deceive" and that in the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956); see also *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam, supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." See *Mwongera, supra*. Therefore, a section 212(a)(6)(C)(i) finding of inadmissibility requires a determination that an individual has committed fraud or misrepresentation with an understanding of what he or she was doing.

While the AAO is unaware that the Board of Immigration Appeals (BIA) has published any decisions in which age has been a dispositive factor in determining inadmissibility under section 212(a)(6)(C)(i) of the Act, the issue of age and its relationship to an individual's culpability have been addressed by several circuit courts in cases involving immigration fraud. In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her as fraudulent conduct "necessarily includes both knowledge of falsity and an intent to deceive" and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was "even further beyond the pale," than imputing a parent's negligence to that child. *Id.*, at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held

accountable for that fraud. While the brothers contended that the immigration judge had erred by imputing their father's fraud to them, the court concluded that the brothers "given their ages at the time" were accountable for the misrepresentations. The court also indicated in its opinion that the BIA had previously acknowledged that while the brothers were young at the time their father filed for asylum, "they were old enough to know better and to be held accountable for their actions." 546 F.3d 890, 892-893 (7th Cir. 2008). In deciding the case, the Seventh Circuit specifically noted that young was a "relative term and that "[b]eing over 16 - and eligible for a driver's license - is quite different than being 10." *Id.*, at 892.

The AAO also observes that USCIS has historically been lenient with unaccompanied minors found inadmissible for misrepresentation and that section 212(a)(6)(C)(i) has been applied only in cases where minors have been found to have clearly understood they were committing fraud.

In the present case, the applicant was a minor on March 5, 2001, the date she sought admission to the United States with a Form I-551 and Form I-327 that did not belong to her. However, her March 7, 2001 sworn statement indicates that she voluntarily presented the passport to the immigration inspector knowing that it was not hers. Further, at 16 years-of-age, she, like the respondents in *Malik v. Mukasey*, was old enough to understand that what she was doing was wrong. Accordingly, we find that the applicant's presentation of another individual's Form I-551 and Form I-327 to an immigration inspector constituted a willful misrepresentation under the Act.

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 on a showing that the bar to admission would result in extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's only qualifying relative is her U.S. citizen spouse. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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*, 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 (BIA) 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 BIA 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.

With regard to hardship upon separation, counsel asserts that if the applicant is removed from the United States, her spouse would be losing his life-time partner and caretaker. He states that being separated would create great amounts of stress for the applicant's spouse that would aggravate his medical condition. Counsel states that the applicant's spouse previously suffered from an arteriovenous malformation and continues to be at risk for seizures.

In his statement, the applicant's spouse asserts that on April 5, 2009, he had a seizure and was taken to the hospital where he was diagnosed with an arteriovenous malformation (AVM) in his brain; that he had embolizations on May 13, 2009 and June 17, 2009; that he had brain surgery on July 27, 2009; and that he has been taking anti-seizure medication since his surgery. The applicant's spouse asserts that his health will suffer (another seizure possibly leading to fatal complications) if the applicant is removed as she is his primary caregiver. The applicant's spouse also states that he could not care for his son alone or, alternately, that he would suffer if separated from his son.

The record contains medical records, medical documents and preoperative diagnostic reports from the University of Southern California University Hospital establishing the applicant's spouse's medical condition. Specifically, a letter dated February 22, 2001, from [REDACTED], M.D., Diplomate American Board of Neurology and Psychiatry, indicates that the applicant's spouse has been under his care since April 2009; that a large AVM in his brain was removed surgically; that he has been treated with anti-seizure medications since his surgery; that he needs help with daily activities; that the applicant is his main caregiver; that psychological stress puts him at risk of having seizures; and that he would be under a significant amount of distress and heath duress if the applicant is removed from the United States.

The record also contains a psychological evaluation dated February 11, 2011, from [REDACTED] Ph.D., indicating that clinical observation and psychological testing of the applicant's spouse, conducted on January 19, 2011 and January 31, 2011, suggest that he is suffering from Major Depressive Disorder, Single Episode, Severe, as well as Adjustment Disorder with Anxiety in response to the applicant's pending immigration problems. Dr. [REDACTED] indicates that the applicant's spouse's symptoms are certain to increase dramatically if the applicant is removed. He further indicates that the applicant's spouse would suffer extreme and unusual emotional and psychological hardship should the applicant be denied residency in the United States. Dr. [REDACTED] recommends that the applicant's spouse seek psychiatric care or discuss the possibility of psychotropic antidepressant medication to help manage his current elevated levels of depression and anxiety

Having considered the evidence of record, the AAO finds that when the hardships created by separation are considered in the aggregate, the applicant has established that her spouse would experience extreme hardship if the waiver application is denied and he remains in the United States.

As to the applicant's spouse relocating to Armenia, counsel asserts that the applicant's spouse would be unable to support his family due to the country's high levels of unemployment and his unfamiliarity with its business practices. He also contends that the applicant's spouse's health would be endangered as he would not receive the medical treatment he needs since Armenia does not have the medical technology or the facilities to provide said treatment. Counsel further states that it is unlikely the applicant's spouse would be able to afford his medications.

The applicant's spouse states that if he returned to Armenia, he would not be able to make a living or afford the high level of medical care he may require for the rest of his life; that he is a derivate asylee and would be at risk in Armenia because of his religious beliefs (Jehovah's Witness) and that he would be concerned for his mother's health, as she has arthritis and various psychological illnesses, including anxiety, insomnia, and depression.

In support of the preceding claims, the applicant provides an article from the World Health Organization regarding the health challenges in the Republic of Armenia, which indicates that her spouse would find it problematic to obtain healthcare if he relocates. She has also submitted a psychiatric evaluation from [REDACTED] M.D., which indicates that her mother-in-law has been under treatment for depression since August 8, 2006. Further, a review of relevant data bases establishes that the applicant was granted derivative asylum status on or about September 27, 2002.

When these hardship factors are considered in the aggregate, the AAO finds that the applicant's spouse would also suffer extreme hardship if he were to join the applicant in Armenia. Accordingly, the applicant has established statutorily eligibility for a waiver under section 212(i) of the Act and the AAO turns to a consideration of whether or not she is eligible for a favorable exercise of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the

United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The positive factors are the applicant's U.S. citizen spouse and son, the extreme hardship her spouse would experience if the waiver application is denied, the health of her mother-in-law and the school transcript indicating that the applicant is attending school. The adverse factor in the present case is the applicant's 2001 misrepresentation, which is serious in nature and cannot be condoned. Nevertheless, the AAO finds the favorable factors in this case to outweigh the unfavorable. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained and the I-601 application will be approved.

ORDER: The appeal is sustained. The waiver application is approved.