



U.S. Citizenship  
and Immigration  
Services



H5

DATE: DEC 19 2012

Office: PROVIDENCE, RI

FILE:



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 Acting Field Office Director, Providence, Rhode Island, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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 through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved 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 remain in the United States with his lawful permanent resident spouse.

The Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Acting Field Office Director*, dated September 22, 2011. The Director also found that the applicant failed to demonstrate that he merited a waiver in the exercise of discretion. *Id.*

On appeal, counsel for the applicant asserts that the qualifying spouse would suffer extreme hardship if the waiver application were denied. He states that the applicant and his spouse have been together for 30 years and that they depend on one another. Counsel also claims that the applicant and his spouse assist their U.S. citizen daughter in caring for their young granddaughter, who is very close to her grandparents. Additionally, counsel states that the applicant and his spouse are providing housing and emotional support to their lawful permanent resident daughter, whose husband is deployed overseas with the military. Counsel also indicates that the qualifying spouse would be unable to afford her home and assist in her granddaughter's care without the financial contributions of the applicant, and that the applicant would likely need financial assistance because he would be unable to find work in Brazil. Counsel also states that the qualifying spouse is afraid to leave her children and granddaughter alone in the United States if she joins the applicant in Brazil. He asserts that the qualifying spouse is extremely upset about the applicant's immigration situation. Finally, counsel states that the applicant merits a favorable exercise of discretion. He claims that an unscrupulous individual convinced the applicant to include false information in his asylum application, and that the applicant is extremely remorseful about his mistake.

The documentation in the record includes, but is not limited to: counsel's brief; statements from the qualifying spouse and the applicant; and financial records. 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:

- (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.

In the present case, the record reflects that the applicant entered the United States as a visitor on July 26, 1998, with authorization to remain until January 25, 1999. On November 6, 2000, he filed an application for asylum. After not appearing for his asylum interview, he was placed in removal proceedings. Those proceedings were later terminated so that the applicant could pursue adjustment of status based on an approved Form I-130, Petition for Alien Relative (I-130) his daughter had filed on his behalf. During an interview on April 1, 2011, the applicant testified under oath and signed a sworn statement indicating that his asylum application had contained false information. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a benefit or admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a lawful permanent resident.

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. Hardship to the applicant or to his children can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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*, 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*, 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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 her statements, the qualifying spouse indicates that she and the applicant assist their eldest daughter, [REDACTED], who is a single mother, in caring for their young granddaughter, [REDACTED]. The qualifying spouse cares for [REDACTED] during the day and the applicant cares for her in the afternoons and evenings, when the qualifying spouse and [REDACTED] are at work. The qualifying spouse believes that [REDACTED] would have to quit her job if the applicant were unavailable to care for [REDACTED] while she is at work, and that she would then be unable to support [REDACTED] financially. Additionally, the qualifying spouse states that [REDACTED] is very close to the applicant and would be

devastated if he were no longer in her life. Furthermore, the qualifying spouse states that she and the applicant provide housing and emotional support to their younger daughter, [REDACTED] whose husband is in Afghanistan with the Air Force. She states that the applicant and [REDACTED] are very close and that [REDACTED] would be unable to cope in the applicant's absence.

The qualifying spouse also claims that she needs the applicant's financial contributions in the United States in order to pay for her home, support her family, and save for retirement. She believes that she would struggle to support the applicant in Brazil because he would be unable to find a job there. She also believes that if she were to join the applicant in Brazil, neither of them would be able to find work due to their ages and they would therefore go hungry.

Finally, the qualifying spouse states that she is very close to the applicant and cannot imagine her life without him. However, she does not want to live in Brazil after such a long residence in the United States and does not want to live apart from her daughters and granddaughter. She indicates that she feels hopeless and desperate and that the applicant's immigration situation has been very difficult for her emotionally.

Although the AAO recognizes that the qualifying spouse would be negatively affected by the applicant's removal, her concerns do not reach the level of extreme hardship. The qualifying spouse's concerns, which involve family separation and economic disadvantage, are common results of the inadmissibility or removal of a close family member. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. Although the qualifying spouse also claims to be depressed as a result of her stress regarding the applicant's immigration situation, there is no evidence to indicate that she has been diagnosed with this or any other condition or that her depression interferes with her ability to carry out her daily tasks. Additionally, while the qualifying spouse states that she and the applicant would live in poverty in Brazil, there is no evidence to support that claim. Even when considered in the aggregate, the difficulties the qualifying spouse would face are not "over and above the normal economic and social disruptions involved in the deportation of a family member." *Id.*; see also *Matter of O-J-O-*, 21 I&N Dec. at 383; *Matter of Pilch*, 21 I&N Dec. 627.

The record also contains information regarding hardship the applicant's daughters and granddaughter would face if the waiver application were denied. However, the applicant's children and grandchild are not qualifying relatives for purposes of a waiver under section 212(i), so hardship to them can only be considered insofar as it affects the applicant's spouse. Although the AAO recognizes that the applicant's removal may result in emotional and economic difficulties for his entire family in the United States, there is no indication that such difficulties would cause extreme hardship for the qualifying spouse.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.