



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

115

DATE: DEC 20 2012

OFFICE: PANAMA CITY

FILE: [REDACTED]

IN RE: [REDACTED]

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:

[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,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India and citizen of Panama was found inadmissible 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), due to his attempted procurement of admission to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. lawful permanent resident spouse.

In a decision dated November 10, 2011, the Field Office Director concluded that the applicant did not demonstrate that his U.S. lawful permanent resident spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the evidence illustrates that the applicant's spouse will suffer from extreme hardship. Counsel does not contest the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel, letters from the applicant and his spouse, a letter from the applicant's son, letters from the applicant's spouse's doctor, a psychological evaluation of the applicant's spouse, biographical information for the applicant and his spouse, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which provides, in pertinent part, that:

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.

The BIA held that the term "fraud" in the Act "is used in the commonly accepted legal sense that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G*, 7 I&N Dec. 161, 164 (BIA 1956). A misrepresentation is generally material only if by making it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear,

unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record illustrates that the applicant presented himself for admission as a B2 visitor for pleasure at the Chicago O'Hare International Airport on October 1, 1997. The record indicates that the applicant initially stated to the immigration inspector that he only intended to remain in the United States for two weeks. The applicant also did not initially disclose the length of his previous visits to the United States and stated that he did not have family members in the United States. Upon referral to secondary inspection, the applicant admitted under oath that his wife was residing in Nashville, Tennessee and working without authorization. The applicant also admitted that he had other family members in the United States, including his brother. It was determined that the applicant had been present in the United States 17 of the previous 18 months. As a result, the applicant was determined to have immigrant intent and he was found to be inadmissible to the United States section 212(a)(6)(C)(i) of the Act. The applicant's visitor visa was cancelled and the applicant was ordered expeditiously removed from the United States. He was removed on October 2, 1997. On appeal, the applicant states that his inadmissibility was the result of a "misunderstanding," but he has not provided any documentation or evidence to illustrate why he should not be inadmissible. 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. Because the nature and length of the applicant's previous visits to the United States and the presence of members of his immediate family was relevant to determine his nonimmigrant intent at the time of his application for admission on October 1, 1997, the AAO finds that the applicant's misrepresentations were material and that he is inadmissible under section 212(a)(6)(C)(i) of the Act, a permanent grounds of inadmissibility.

Section 212(i) of the Act provides that:

- (1) 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.

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 U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(i) of the Act. Hardship to the applicant or his children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse. 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-Moralez*, 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 deportation, 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, 885 (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.

On appeal, counsel for the applicant states that the hardships that the applicant’s lawful permanent resident spouse faces as a result of his inadmissibility rise to the level of extreme, considered in the aggregate. Counsel states that as a result of separation from the applicant, the applicant’s spouse is suffering moderate major depressive disorder and generalized anxiety, as well as “numerous other physical ailments.” The applicant’s spouse has been a lawful permanent resident of the United States since March 10, 2011 and presumably before that time, resided with the applicant in Panama. Counsel states that the applicant’s spouse’s health will improve if the applicant is able to join her in the United States. In support of those statements, the record contains a letter from [REDACTED] of Mesquite, Texas, dated December 5, 2011, stating that the applicant’s spouse has been under the doctor’s care for nine months for: anxiety, depression, insomnia, separation anxiety, and hypertension. [REDACTED] also states that as a result of separation from her husband, the applicant is being treated by a psychiatrist and that “she will definitely [sic] improve healthwise [sic] if her husband is with her.” The record, however, indicates that the applicant was seen by Licensed Professional Counselor, not a psychiatrist. [REDACTED] on two dates for a psychological evaluation. In her evaluation, [REDACTED] states that the applicant and his spouse were married on May 9, 1979, although the record indicates that the marriage occurred on May 9, 1975. The evaluation relates that the couple has three adult children, and that the applicant’s spouse has relied on the applicant to support her emotionally, physically, and financially. The record indicates that the applicant’s spouse, at the time of the evaluation, was residing with her son in Texas, and caring for her granddaughter. [REDACTED] concluded that the applicant’s spouse was suffering from Major Depressive Disorder and Generalized Anxiety Disorder as a result of the separation. The symptoms described by [REDACTED] however, cannot be distinguished from the emotional hardship that is normally experienced by individuals separated as a result of immigration inadmissibility.

The AAO will turn to the additional evidence in the record to determine whether the emotional hardship described above amounts to extreme hardship when considered with the other hardships presented. In regards to the medical hardship experienced by the applicant, [REDACTED] states that the applicant's spouse suffers from diabetes and ulcers. That information, however, was not confirmed by a medical professional. In addition to the psychological conditions stated above, [REDACTED] letter stated only that applicant's spouse suffered from hypertension. The AAO notes that significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record, however, is insufficient to establish that the applicant's spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO notes that no documentation was submitted in regards to the applicant's spouse's financial dependence on the applicant. Moreover, the applicant did not state how frequently his spouse is able to visit him in Panama. The applicant and his son state that the applicant's son is suffering financial hardship as result of supporting both the applicant and his spouse in two separate locations. The AAO notes that hardship to the applicant's son is only relevant insofar as it is shown to cause hardship to the applicant's qualifying relative. Moreover, the applicant and his son state that the applicant's spouse is not able to work in the United States due to her inability to speak English. However, in his sworn statement in the record, the applicant stated that his spouse worked in the United States in 1997. It is not clear why she is now not able to obtain employment. There is no clear indication in the record of any financial hardship to the applicant's spouse as a result of the applicant's inadmissibility. As stated 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 at 165. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, particularly as result of their long-term marriage, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

Counsel does not address the hardship that the applicant's spouse would suffer if she were to move back to Panama to reside with the applicant. [REDACTED] however, states in her letter dated December 8, 2011, that the applicant's spouse reported to her that she had safety concerns in Panama. The applicant's spouse reported that the country was becoming more violent and that she and her husband had been the victims of robberies. These reports, however, were not confirmed by the applicant or his spouse in their letters. There are also no police reports or country conditions evidence in the record. As stated 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 at 165. The only evidence of the applicant's spouse's family ties in the United States is the evidence of her son through whom she obtained lawful permanent resident status on March 10, 2011. There is no evidence of the hardship that she

would face if she were to be separated from her son, or other relatives in the United States. The evidence, when considered in the aggregate, does not establish that the applicant's spouse would suffer extreme hardship were she to relocate to Panama to reside with the applicant.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.