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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



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

765

[REDACTED]

DATE: FEB 06 2012 OFFICE: INDIANAPOLIS, INDIANA

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,

Handwritten signature of Perry Rhew in black ink.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Algeria who has resided in the United States since December 31, 1998, when he used a French passport which did not belong to him in an attempt to gain admission into the United States. He 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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and 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 remain in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that there was insufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 10, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, as well as copies of USCIS decisions, the applicant's removal order, a copy of the applicant's I-601 waiver application, a statement from the applicant, and a U.S. Department of State country conditions report on Algeria. In the brief, counsel contends the Field Office Director failed to consider the danger to the applicant and the consequent emotional distress to his spouse given that an Immigration Judge has found his life or freedom would be threatened upon removal to Algeria. *Brief in support of appeal*, September 23, 2009. Counsel explains the applicant's spouse and children could also be subject to the same danger and harm upon relocation to Algeria. *Id.* Counsel asserts the Field Office Director erred in considering the applicant's use of a false French passport to be an insurmountable negative equity. *Id.* Counsel also discusses other hardship to the qualifying relative due to their children. *Id.*

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, evidence of removal proceedings, evidence of proceedings before a U.S. District Court, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, residence, admission, and citizenship, financial documents, paystubs, U.S. Federal Income Tax Returns, letters from family, friends, and employers, educational documents, photographs, and passport copies. 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 on December 31, 1998, the applicant presented a photo-substituted French passport in the name of [REDACTED] to immigration officials to gain admission into the United States. The applicant admitted under oath that this passport did not belong to him, and that he bought the passport and other documents in Turkey for \$600.00. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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. 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 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.

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

Counsel contends the applicant’s spouse would experience significant emotional distress if the applicant were to return to Algeria where his life and safety would be at extreme risk. In support, the record contains an immigration judge’s order, denying the applicant’s request for asylum based on discretion, but granting his application for withholding of removal from Algeria under

section 241(b)(3) of the Act. *Order of Immigration Judge*, November 5, 2004. The record also contains numerous documents related to the applicant's request for asylum, withholding of removal, and relief pursuant to the Convention Against Torture, including documentary evidence of the applicant's membership in a particular group and articles on country conditions in Algeria. Counsel further asserts the applicant's spouse and their U.S. Citizen children may also be subjected to the same danger and harm if they relocate to Algeria with the applicant.

Counsel states that although the children have been taught Berber and the Arabic language, and have some familiarity with the customs and religion of Algeria, the children and the spouse would still have difficulties adjusting to life in Algeria. Counsel moreover indicates that the applicant's spouse's membership in the same ethnic group as the applicant is a reason the family cannot return to Algeria. Counsel explains that the family's third child, Alaa Kadri, has been diagnosed with a heart murmur and will require monitoring for two years.

The record also contains evidence of household income and expenses in support of a finding of financial hardship. Therein, the applicant has shown that the household expenses, as shown on a monthly budget sheet and supported by copies of monthly bills, without the applicant's financial contributions, exceed household income. The AAO therefore finds that the applicant has established his spouse would experience some financial hardship without the applicant.

Furthermore, an immigration judge has found the applicant's "life or freedom would be threatened in [Algeria] because of [his] race, religion, nationality, membership in a particular social group, or political opinion." Section 241(b)(3) of the Act, *see also Order of Immigration Judge*, November 5, 2004. The U.S. Department of State describes the current situation in Algeria in its current travel warning:

The Department of State urges U.S. citizens who travel to Algeria to evaluate carefully the risks posed to their personal safety. Terrorist attacks, including bombings, false roadblocks, kidnappings, and ambushes occur regularly, particularly in rural areas such as the Kabylie region of the country. The use of suicide bomb attacks, particularly vehicle-borne attacks, emerged as a terrorist tactic in Algeria, including in the capital, beginning in 2007. The group that claimed credit for the December 11, 2007 suicide car-bomb attacks in Algiers has pledged more attacks against foreign targets and specifically against U.S. targets... The Department of State recommends that U.S. citizens avoid overland travel in Algeria... Additionally, sporadic episodes of civil unrest have been known to occur, such as the riots in Algiers and many other cities from January 2011 to the present. U.S. citizens should avoid large crowds and maintain security awareness at all times.

U.S. Department of State Travel Warning: Algeria, September 19, 2011. Returning to Algeria, given the objective finding that the applicant's life or freedom would be threatened, taken in light of the country conditions, would pose a well-documented threat to the applicant's safety. Furthermore, the AAO finds the applicant's spouse would experience emotional distress above

and beyond that which is normally experienced by relatives of inadmissible aliens given such a return. When viewed cumulatively with the documented financial hardship upon separation, the AAO concludes the applicant has established his spouse would experience extreme hardship if the applicant returned to Algeria without his spouse.

Furthermore, the record establishes the applicant's spouse would also experience hardship upon relocation to Algeria. It is noted that the applicant's spouse is a native of Algeria, and that she and her children are familiar with local languages and customs. However, relocation to Algeria with the young children, where the applicant faces an objective threat to his life or freedom, would not substantially decrease the spouse's emotional hardship. Moreover, this hardship would be exacerbated by the country conditions as described *supra*. The AAO therefore concludes the applicant's spouse would also experience extreme hardship upon relocation to Algeria.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

The unfavorable factors include the applicant's 1998 misrepresentation. The favorable factors include the extreme hardship to the applicant's spouse his children, the lack of a criminal record, and evidence of good moral character as stated in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.