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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**

H5

DATE: FEB 06 2012 OFFICE: SAN FRANCISCO, 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)

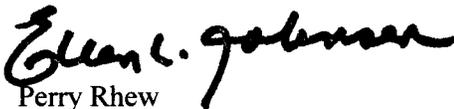
ON BEHALF OF APPLICANT:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Armenia who has resided in the United States since July 25, 2003, when he was admitted pursuant to a B-1 / B-2 non-immigrant visa. The applicant was consequently found to have misrepresented his intention to immigrate to the United States when he applied for a non-immigrant visa. 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 procured 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.

The Field Office Director concluded that not only did the applicant fail to show his qualifying relative would experience extreme hardship given the applicant's inadmissibility, he also did not demonstrate he merited a favorable exercise of discretion and denied the application accordingly. *See Decision of Field Office Director* dated April 22, 2011.

On appeal, counsel for the applicant submits a brief in support, as well as an updated declaration from the applicant, a copy of a power of attorney form, excerpts from the U.S. Department of State Foreign Affairs Manual (FAM), and a letter from an employer. In the brief, counsel sets forth the applicant's immigration history, and contends that the applicant is not inadmissible under section 212(a)(6)(C) for fraud or misrepresentation because he did not violate his non-immigrant status as set forth by the FAM. Furthermore, counsel asserts even if the applicant is inadmissible, he is eligible for a waiver under section 212(i) of the Act, and merits a favorable exercise of discretion.

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, evidence of birth, marriage, divorce, residence, and citizenship, psychiatric and psychological evaluations, medical records, letters from physicians, information on medical care, religious freedom, human rights, and other country conditions in Armenia, mortgage documents, financial documents, and other applications and petitions filed on behalf of the applicant. 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.

The Department of State Foreign Affairs Manual states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application...” *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment...” *Id.* at § 40.63 N4.7-1(3).

Under this rule, “If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.” *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive.

In the present case, the record reflects that the applicant was a security guard at the U.S. Embassy in Yerevan, Armenia. The applicant applied for a non-immigrant visa, stating he desired to visit the United States and intended to return to Armenia. The applicant was granted a B-1/B-2 nonimmigrant visa on June 26, 2003, based solely on the fact that he had been employed with the U.S. Embassy since 1999, had eight weeks of approved leave, and expressed his intention to return to Armenia and employment with the Embassy after a temporary visit. On July 17, 2003, the applicant signed a power of attorney form, giving his then mother-in-law [REDACTED] the authority to collect money due to him from the U.S. Embassy. The applicant and his then-wife were admitted to the United States on July 25, 2003. On or about August 24, 2003, the date of termination of his employment with the U.S. Embassy (*See* Form JF-62A, Personal Services Agreement Action, dated September 3, 2003), the applicant telephoned the U.S. Embassy in Armenia and informed his employer that he was resigning from his employment as a security guard.

Counsel asserts the applicant did not violate his nonimmigrant status within the meaning of §40.63 N4.7, and even if he had, any such conduct occurred after 60 days of his entry. This assertion is not supported by the record. The applicant does not contest that in order to obtain a nonimmigrant visa he told immigration officials he intended to return to Armenia after a temporary visit to the United States.

Service records reflect the applicant informed the U.S. Embassy of his resignation within 30 days after he was admitted to the United States. Resigning from his employment in Armenia within 30 days of entry signified his intention to reside in the United States permanently. Additionally, although the applicant claims he signed the power of attorney form in order to give his mother-in-law access to funds required for taking care of his two minor children while he was on vacation, this is also not supported by the record. The power of attorney was not restricted solely to eight weeks, which was the professed length of his visit, but for one year.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured 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 applicant’s spouse explains that she has numerous medical and psychological problems. She states that in 1993, she was diagnosed with having an alcohol addiction, and is currently diagnosed with nicotine dependence. She adds that she had a stomach ulcer in 1990, which has been successfully controlled in recent years by managing her diet and stress levels. Despite management of stress, she indicates she has been diagnosed with major depressive disorder, anxiety disorder, and adjustment disorder. A psychiatric evaluation by [REDACTED], confirms that she has adjustment disorder with anxiety and depressed mood. Another evaluation by [REDACTED], opines that the applicant’s spouse displays symptoms consistent with a diagnosis of major depressive disorder and anxiety disorder. Both evaluations emphasize that the spouse’s symptoms are likely to be exacerbated if her husband returns to Armenia. Evidence of record shows the applicant’s spouse is currently taking medications to treat her psychological conditions. Several articles are submitted to show that medical and psychological care in Armenia is below western standards.

In addition to her own medical and psychological issues, the applicant submits evidence of his spouse’s mother’s heart attack in November 2009. The evidence shows the then 84 year old mother was discharged into the spouse’s care with a bedside commode, a wheelchair, a hospital bed, and a walker and that the spouse was trained to use that equipment.

The applicant’s spouse also discusses financial hardship given the applicant’s inadmissibility. She explains she would lose her job of 18 years in drafting / design engineering if she were to move to

Armenia with the applicant. She adds that she would be unable to find adequate employment in Armenia given that she does not know the Armenian language, and even if she were to find a job, the pay and the healthcare benefits would be insufficient. The spouse further explains that without her and her spouse's income in the United States, she would be unable to keep her mortgage current. Evidence is submitted of the spouse's original mortgage loan, approximately \$275,000, and her modified loan, around \$150,000. The spouse explains if she had to sell her home within 12 months of the loan modification, December 2009, she would owe the full amount of the original loan, and her home would sell for less than even the \$150,000, as similar apartments in the same complex recently sold for \$55,000 to \$85,000. The applicant submits evidence of those sales. The spouse contends she would be unable to meet her financial obligations, especially her mortgage, on the money she could make in Armenia.

The applicant's spouse describes other difficulties in relocating to Armenia. The applicant's spouse fears persecution based on her Jewish faith in Armenia, and explains that 2%, or less than 1,000 people in Armenia are Jewish. The applicant's spouse describes her history as a Jewish refugee from the Ukraine, and cites to specific instances of anti-Semitism in Armenia. The applicant submits articles and reports on religious freedom in Armenia in support of his spouse's assertions. Furthermore, the spouse indicates she does not know anyone in Armenia, has strong family ties in the United States, and if she had to leave the United States, she would have to leave her only son, who is 31 years old, as well as her 84 year old mother behind. The applicant's spouse additionally contends she could not live in Armenia given its unstable political conditions, record of human rights violations, employment discrimination, treatment of women, and pervasive poverty.

The Form I-864, Affidavit of Support, shows the applicant's spouse makes an annual income of \$60,000, and her U.S. Federal Income Tax returns show her adjusted gross income in 2007 was \$135,808. Although the spouse claims she needs the applicant's income to afford her mortgage payments and other household expenses, the record does not show the mortgage payment and other household expenses exceed the spouse's income. The applicant further fails to provide any evidence regarding whether he would be able to contribute to the household financially while in Armenia. Given the evidence of record, the AAO cannot conclude the applicant's spouse would suffer financial hardship if she remained in the United States without the applicant.

The record reflects the applicant's spouse's mother suffered from a heart attack in 2009. However, there is no evidence from a medical services provider to show what care and assistance the mother currently requires. The spouse has indicated her own stomach ulcer issue, which was diagnosed over 10 years ago, is currently controlled without medication, despite the stress and other psychological problems she has. The AAO acknowledges the applicant's spouse was diagnosed with depression, anxiety, and adjustment disorder, and has had some issues with substance abuse. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO

cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Armenia without his spouse.

The applicant has shown she would experience extreme hardship upon relocation to Armenia. A Ukrainian native, the applicant has no ties to Armenia, and does not know the Armenian language. Furthermore, the applicant has submitted evidence to show his spouse may experience difficulties because of her Jewish faith. These difficulties, when taken cumulatively with some evidence regarding country conditions and the spouse's financial situation due to her mortgage and earning power in Armenia, show in the aggregate the impacts of relocation to Armenia are above and beyond the hardship normally experienced by relatives of inadmissible aliens.

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.

Furthermore, even if the applicant had shown extreme hardship to his spouse upon separation as well as relocation, the applicant has not demonstrated that he merits a favorable exercise of discretion. As a security guard for a U.S. embassy, the applicant was in a position of trust with the U.S. Government. The record reflects the applicant then used his employment with the embassy in order to obtain a non-immigrant visa to the United States, and made representations about his intent which were later found to be untrue. Although the applicant has some positive equities which have some bearing on a discretionary analysis, the AAO finds that the applicant's misrepresentation, facilitated by his position of trust with the U.S. government, is a strong negative factor which indicates a favorable exercise of discretion is not in the best interests of this country.

In proceedings for a 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.