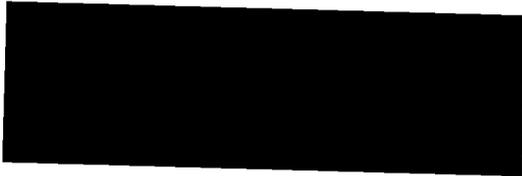


U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

DATE: FEB 08 2012 Office: ATHENS, GREECE



IN RE: Applicant:

APPLICATION: Application for Waiver of Ground 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Egypt who was found to be inadmissible to the United States 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), for having attempted to obtain an immigration benefit through fraud or the willful misrepresentation of a material fact. The applicant is the spouse of a United States citizen and 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.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated August 17, 2009.

On appeal, counsel asserts that the applicant did not commit any fraud or misrepresentation in connection with a nonimmigrant visa application. In the alternative, counsel asserts that the applicant's spouse would experience extreme hardship if his waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated September 11, 2009; *see also counsel's brief*, dated October 19, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant and his spouse; copies of the applicant's spouse's medical records; information on the medication the applicant's spouse is taking; a medical statement relating to the applicant's spouse; copies of earnings statements for the applicant's spouse; copies of electronic airline tickets; copies of bank statements for the applicant's spouse; and country conditions information on Egypt. The entire record was reviewed and all relevant evidence considered in reaching a decision on appeal.

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.

In the present case, the record reflects that a U.S. Department of State consular officer found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having paid for fraudulent documents in order to obtain a 2001 nonimmigrant visa.

On appeal, counsel asserts that the applicant did not submit any fraudulent document in connection with his nonimmigrant visa application in 2001 and that he has not been informed of the factual basis upon which the 212(a)(6)(C) finding was made. Counsel also contends that the applicant has

not been provided with the opportunity to rebut the allegations made against him. He states that denying the applicant this opportunity has deprived him of the chance to overcome these allegations and has prevented the assembly of a fully-developed factual record for the Embassy and now the AAO to review.

In an undated declaration submitted by the applicant, he asserts that he did not commit any fraud or engage an agent to commit fraud on his behalf in connection with his nonimmigrant visa application in 2001. The applicant claims that he was one of eight or nine players and members of the Egyptian Federation for Karate for whom the Federation made visa applications. He further claims that he only provided his passport and two pictures to the Federation as requested and that he does not recall completing an application for the visa.

The AAO notes the preceding claims regarding the applicant's lack of knowledge concerning the nonimmigrant visa application filed in his name in 2001 and the lack of opportunity provided him to rebut the consular officer's 212(a)(6)(C) finding. We find, however, that records available to United States Citizenship and Immigration Services (USCIS) indicate that, in 2001, the applicant both paid to have his name added to a list of members of a Ministry of Youth group going to a U.S. karate camp and to obtain the fraudulent documents submitted with his visa application. We further note that the Field Office Director provided the basis for the consular officer's section 212(a)(6)(C)(i) finding in her August 17, 2009 decision and that the appeal process has afforded the applicant the opportunity to rebut these findings. The applicant, however, has provided no evidence on appeal, beyond his and counsel's statements, to overcome the consular officer's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the AAO finds that the applicant attempted to procure a nonimmigrant visa to the United States through fraud or the willful misrepresentation of a material fact and that he is, therefore, barred from admission to the United States under section 212(a)(6)(C)(i) of the Act.

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 or, in the case of a VAWA self-petitioner, the alien demonstrates

extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(a)(i) of the Act is dependent on a showing that the bar to admission would impose extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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 AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant's spouse would experience hardship if she relocated to Egypt to be with the applicant. Counsel states that the applicant's spouse is a United States citizen, has significant family ties to the United States and has been employed for more than 16 years by the same employer. Counsel also states that the applicant's spouse has serious long-term medical problems, which need specialized treatment and continuous monitoring, and that she would not be able to receive the medical treatment she needs in Egypt. Counsel further asserts that if the applicant's spouse relocates to Egypt she would lose her medical insurance and would be unable to obtain adequate medical insurance in Egypt because of her pre-existing medical conditions. He also maintains that the poor sanitary conditions and the hot, humid weather in Egypt would adversely affect the applicant's spouse's health. Counsel states that the applicant's spouse's employment has provided her with a highly specialized skill set that is not readily transferable, that she lacks the ability to speak or read Arabic and that it will be very difficult, if not impossible, for her to get a job in Egypt.

In an undated statement submitted for the record, the applicant's spouse states that she has worked at the same job for more than 16 years and has a stable income with benefits. If she moves to Egypt, the applicant's spouse asserts, she would lose her benefits, and would have difficulties securing a job in Egypt because of her advanced age, her gender, the bad economy, and the fact that she does not speak Arabic. The applicant's spouse states that all her family members live in the United States; that she is very close to her family, particularly her only daughter and her ailing parents; and that it would be a hardship for her to leave them. She also reports that her parents have medical problems and may need her assistance in the future.

In support of the preceding claims, the applicant has submitted medical documentation to establish his spouse's physical and psychological problems. In an October 9, 2009 statement, [REDACTED] reports that he has been the applicant's spouse's primary physician for several years and indicates that she has been treated for most of her life for a chemical imbalance that leads to bouts of depression and crying, thoughts of suicide, feelings of worthlessness and an inability to function in her daily life. He indicates that her symptoms have been controlled through medication and that he reevaluates her medications every three months for effectiveness and dosage. [REDACTED] reports that he recently changed the applicant's spouse from Prozac to Celexa to curb her insomnia. [REDACTED] further indicates that the applicant's spouse is struggling with the thought of leaving her only daughter and her parents in the United States to move to Egypt to be with the applicant. He states that the push for the applicant's spouse to leave her family in the United States could send her into a deeper depression.

[REDACTED] further indicates that the applicant's spouse has been treated for hypertension for most of her adult life, and that her condition seems to be under control with medication, but that the extreme summer temperatures in Egypt could be a problem for her blood pressure. [REDACTED] states that the applicant's spouse suffers from degenerative arthritis in both knees, that she has had arthroscopy on her left knee and will need replacement of both knees in the future. Finally, [REDACTED] states that the applicant's spouse suffers from morbid obesity, that she underwent a vertical banded gastroplasty in 1997, and that she is being processed for insurance approval for a new kind of surgery because the gastroplasty is no longer effective. [REDACTED] concludes that the applicant's spouse's health is best served by continued residence in the United States, where she can maintain her financial and insurance status. He cautions that the lack of proper treatment for her various ailments can lead to further illness such as diabetes, stroke and sleep apnea. [REDACTED] statement is supported by medical records detailing the applicant's spouse's long-term health problems and the treatments she has received.

The AAO acknowledges the preceding claims regarding the impacts of relocation on the applicant's spouse. We have taken particular note of the submitted medical documentation relating to the applicant's spouse and find it to establish that she suffers from serious, long-term physical and mental health problems. We also find the country conditions information in the record to establish the limited availability of specialized medical care in Egypt. Moreover, we recognize that the applicant's spouse's inability to speak or read Arabic would significantly affect her ability to obtain employment in Egypt or adapt to its culture and society. When these specific hardship factors and the hardships that routinely arise as a result of relocation are considered in the aggregate, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she joins him in Egypt.

The applicant's spouse has also submitted evidence to establish that his spouse is experiencing extreme hardship as a result of their separation. In several statements submitted for the record by the applicant's spouse, she asserts that the hardship of being separated from the applicant is indescribable. She reports that she is under the care of a physician for depression and high blood pressure, and that she has had to increase the dosage of her blood pressure medicine because of the stress created by the denial of the applicant's visa application. She states that she is unable to sleep, eat or focus on her daily life when all she wants is to be reunited with the applicant. The applicant's

spouse also contends that it has been difficult for her to deal with family emergencies without the applicant and that, although she has a good job, she finds it very hard to save enough money to pay for visits to the applicant.

As previously discussed, the record includes an October 9, 2009 statement from [REDACTED], the applicant's primary care physician, and numerous medical records, which establish that the applicant's spouse has serious, long-term physical and mental health problems for which she is receiving treatment, but with which she continues to struggle. In his statement, [REDACTED] indicates that the applicant's spouse has told him that she is overwhelmed with feelings of guilt and stress as she considers whether to relocate to Egypt or remain in the United States and that he has changed one of her medications to help her with insomnia. He also reports that the applicant's spouse's father has been diagnosed with lymphoma and that, as her parents' oldest child and only daughter, she will be relied on by her mother for emotional support.

When the fragile state of the applicant's spouse's mental health, including her recurring bouts of severe depression; her physical health; her father's recent cancer diagnosis and the hardships normally created by the removal or exclusion of a family member are considered in the aggregate, the AAO finds the applicant to have established that his spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without him.

As the applicant has established extreme hardship to his spouse as a result of his inadmissibility, he is statutorily eligible for a waiver under section 212(i) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion.

In discretionary matters, the applicant 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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 adverse factor in the present case is the applicant’s attempt to procure a nonimmigrant visa to the United States through fraud or the willful misrepresentation of a material fact for which he now seeks a waiver. The mitigating factors in the present case are the applicant’s U.S. citizen spouse; the extreme hardship to her if the waiver application is denied and the absence of any criminal record relating to the applicant.

While the AAO finds the applicant’s immigration violation to be serious in nature and does not condone it, we, nevertheless find that when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.