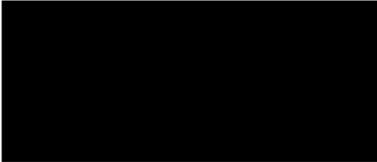


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



HS



DATE: **FEB 16 2012** OFFICE: VIENNA, AUSTRIA

File:

IN RE: Applicant:

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:

SELF-REPRESENTED

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 Officer-in-Charge, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Hungary 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 with her U.S. citizen spouse.

The Officer-in-Charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Officer-in-Charge*, dated August 14, 2009.

On appeal, the applicant's spouse asserts extreme hardship of an emotional, age-related, and economic nature. See *Hardship Letter 2*, undated.

The record includes, but is not limited to: Form I-601 and denial letter; two hardship letters; employment/contracting letters; reference letter for the applicant; letter from church; divorce, death, and marriage certificates; single page from 2006 tax return; checking account statement; visa applications and related documents; photos; and Forms I-130 and I-129F. 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, 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.

The record reflects that in 2007, the applicant applied for a visitor's visa in Belfast using the surname of her former husband. When the visa was refused, the applicant filed a second visa application, this time in Budapest, by using a new passport and her new husband's surname. In support of the second visa application, the applicant presented fraudulent documents including a forged letter of employment from the Hungarian Institute of Oncology and a forged vehicle registration. The applicant's spouse asserts that the false documents were submitted "under the guidance and direction" of a third party and that it was not the applicant's "desire to intentionally misrepresent a material fact." See *Hardship Letter 2*, undated. The AAO notes that the applicant is rendered inadmissible under section 212(a)(6)(C)(i) of the Act, § 8 USC 1182(a)(6)(C)(i) for having intentionally submitted false documents, regardless of who prepared

the documents or what her motivation was in submitting them. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (1975) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1961).

The record reflects that the Hungarian Institute of Oncology reported the forged letter to Hungarian police and the applicant was convicted of forgery, a felony. The applicant was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the Officer-in-Charge. The applicant does not contest these findings on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

Section 212(i) of the Act provides, in pertinent part:

- (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 qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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-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 record reflects that the applicant's spouse is a 64-year-old native of Hungary and citizen of the United States. Addressing separation-related hardship, he stated in *Hardship Letter 1*, dated

September 10, 2007, that he “would like to emphasize the extreme hardship (age-wise, and our financial status) my wife’s separation from me and my four children.” The record shows that the applicant is 55-years-old and all four of the applicant’s spouse’s children are adults. He states: “I already suffer from depression, headaches and other health problems because of my separation from my wife.” *Id.* The record contains no documentary evidence related to the health of the applicant’s spouse. 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)). The applicant’s spouse states that “long term separation would cause more emotional distress and financial losses for me and my four US citizen children.” *Id.* He does not elaborate concerning either assertion and the record contains no documentary evidence related thereto. The applicant’s spouse states that he and his children live together and would all greatly benefit from his wife living with them. *Id.* He states that as an owner-operator commercial truck driver he is only home one or two days a week and the applicant will “take care of the family, cook our meals, and provide a real home for us.” *Id.* The applicant’s spouse states that his wife will also “take care of the business administration, paying our bills, and everything else I could not do myself.” *Id.* He states in *Hardship Letter 2*, undated, that two of his four children rely on him for financial support. The record contains no documentary evidence showing such support.

The AAO has considered in the aggregate factors such as the age of the applicant’s spouse, his desire for the applicant to live with and care for him and his children, that the couple has never lived together, and assertions of emotional, physical, and economic difficulties related to separation. The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant’s spouse states that he will be of retiring age and if his wife is not permitted to enter the United States, he will have to leave his business and children to go and live with her. *See Hardship Letter 2*, undated. No other relocation-related hardships are asserted. The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse including separation from family members – particularly his four adult children, and separation and/or retirement from his position as an owner-operator commercial truck driver. The AAO has also considered adjustment to a country the applicant’s spouse has not resided in for more than two decades; separation from friends and community in the United States; and emotional, physical, and age-related concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship if he were to relocate to Hungary to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.