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U.S. Department of Homeland Security  
U.S. 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



#5

DATE: **JAN 03 2012** Office: [REDACTED]  
IN RE: Applicant: [REDACTED]

FILE: [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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
for  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Indonesia who used the passport and visa of another person to enter the United States. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 9, 2009.

On appeal, counsel for the applicant asserts the District Director employed the wrong standard in denying the application and that the waiver application should be remanded or approved by the AAO. *Form I-290B*, received July 20, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record establishes that the applicant presented the passport and visa of another person when entering the United States in 2000, and thus entered the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record includes, but is not limited to, the following evidence: statements from counsel for the applicant; court records relating to the applicant's spouse; a statement from the applicant's spouse's father; a statement from [REDACTED] Psychotherapist, dated May 11, 2009; and documents filed in relation to the applicant's Form I-130.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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(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 their children 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 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.

On appeal, counsel for the applicant asserts that the District Director applied an improper standard of review and that the applicant’s spouse submitted sufficient evidence to establish a psychological need for the applicant’s spouse. *Brief in Support of Appeal of Denial of Waiver*, received August 7, 2009.

The record contains a court order issued by the Superior Court of the District of Columbia, dated February 16, 2005. The Order reveals that the applicant’s spouse was found not guilty by reason of insanity for an incident on January 4, 1987, in which his landlady was beaten to death, her body mutilated and stuffed into a utility closet in the basement of the building. After admitting himself to the psychiatric ward at [REDACTED] the applicant’s spouse told the doctor that his landlady was the devil and that it had been his right to destroy a devil. The applicant’s spouse was diagnosed with Schizoaffective Disorder, Bipolar Type and Narcissistic Personality Disorder and takes Zyprexa and Tegretol to control his condition. In 2002 the applicant’s spouse applied to the court for unconditional release, and in 2005, after he signed a pledge to continue taking his medicine to control his condition the court granted his motion for unconditional release.

The applicant’s spouse submitted a statement in support of the Form I-601 application in which he states that he had been searching to get married for a long time, and that he had met women “who were users, deceitful and mean” and felt like giving up until he met the applicant. He explains that he tends to get sick mentally whenever a stressful event happens in his life, and that a separation would cause him to relapse into mental illness. He states that his parents are aging and have physical problems, and that if he and the applicant were separated he would have to deal with it on his own.

The applicant's spouse states that this could result in him ending up homeless or giving up by "attempting suicide." He concludes by asserting that his mental illness would be hard to treat, and could lead to suicide or even hurting someone and that he wants USCIS to consider the risk involved with his mental health if the applicant is removed. The AAO notes that the record does not contain any evidence regarding health issues suffered by the applicant's spouse's parents.

The record also contains a sworn affidavit submitted to the court by the applicant's spouse, dated February 15, 2005, giving a "solemn pledge" to continue his medications. He further states "[m]y medication regime completely controls all symptoms of my mental illness, which would become active again were I to stop taking my medication."

The record contains a statement from [REDACTED] Psychotherapist, dated May 11, 2009. The letter states:

. . . [applicant's spouse] has had two episodes of prolonged psychosis which were difficult and disruptive. He presents now because his wife may be deported, and he feels anxious that such an action may cause him to decompensate again . . . His life is very guarded, and relationships are minimal. He is markedly dependent on his wife for emotional sustenance. Separation from her would no doubt be extremely difficult and stressful. The risk of relapse, based on his history, is greater than it would be for someone without a psychiatric history. His psychiatric status is chronic, for which he receives Social Security Disability benefits . . . Such a separation therefore would be considered extremely stressful for him, and an extreme personal hardship would obviously result."

The applicant's spouse's father also submitted a letter, dated May 22, 2009, asserting that the applicant's spouse's illness is triggered by stress in his life, that he is a very fragile individual and sensitive due to his personality and illness and that he could slip into serious mental illness due to stress or life problems.

The applicant does not articulate any other basis of hardship for her spouse other than the emotional support he needs from the applicant due to his mental illness.

The AAO finds that the record establishes that the applicant's spouse suffers from mental illness. However, the applicant's spouse's attestation to the court in 2005 states that his medication completely controls his symptoms. In addition, the 2005 Court Order releasing the applicant's spouse references a 1999 Risk Assessment Report wherein it was stated that the spouse is at low risk of violence if he remains on his prescribed medications. The Court Order also notes that [REDACTED] a psychologist who performed a psychological evaluation of the applicant's spouse, found a low risk of violence if the applicant's spouse were to remain on his medications. The court also noted that the applicant had been receiving treatment from [REDACTED] and that [REDACTED] reported to the court that the applicant's spouse had been compliant with his prescribed medication and had remained mentally stable. Further, the AAO notes that the record

reflects that the applicant's spouse was previously married, and was divorced but there is no evidence that the end of that marriage resulted in a relapse of the applicant's spouse's symptoms. Finally, while the statement from [REDACTED] states that the applicant's spouse's "relationships are minimal," the record indicates that the applicant's spouse is close with his parents as he has resided with them for years. In light of these observations the AAO does not find the record to support counsel's assertions that the applicant's spouse's mental health will regress.

The record fails to establish that the applicant's spouse would experience any financial or physical hardship due to separation. Although the applicant's spouse clearly has a history of mental illness, and separation from the applicant may cause some hardship for the applicant's spouse, the applicant has failed to establish that such hardship would rise to the level of extreme. In light of little evidence of other impacts, the AAO does not find that the impacts on the applicant's spouse, even when considered in the aggregate, rise to the degree of extreme hardship.

With regard to hardship upon relocation, the AAO does not find the record to establish that the applicant's spouse would experience uncommon hardship upon relocation. The record contains a single statement with regard to hardship upon relocation, in the letter from [REDACTED] which states the applicant's spouse "does not have the resources to relocate" with the applicant. There is no documentation in the record to support this assertion. The statement in the letter from [REDACTED] is insufficient to establish extreme hardship upon relocation.

Without an articulation of the impacts he would experience upon relocation and evidence to support those articulations the AAO cannot determine that any impacts on him would rise above those normally experienced by the relatives of inadmissible aliens who relocate abroad.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse may experience mental hardship as a result of separation from his wife, but separation would not occur if the applicant were to relocate with the applicant. This hardship alone, however, is not sufficient to establish extreme hardship to the applicant's spouse due to her inadmissibility, as the applicant's spouse would be able to reside with his wife abroad and the record does not establish that he would experience any uncommon impacts upon relocation. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

  
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Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* 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.