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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**



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#15



Date: JAN 11 2012 Office: SANTA ANA, CALIFORNIA

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 Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Vietnam and a citizen of Canada 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 9, 2009.

On appeal, the applicant's wife states they were "so sad and devastated" when they received the denial from United States Citizenship and Immigration Services (USCIS). *Form I-290B*, dated May 4, 2009.

The record includes, but is not limited to, the applicant's wife's statement on appeal, statements from the applicant and his wife, a psychiatric evaluation on the applicant's wife, prescription documents for the applicant's wife, insurance documents, tax documents, employment verification for the applicant's wife, a rental agreement, and bank statements. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 [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...

On appeal, the applicant's wife claims the applicant "still doesn't understand why he had to fill out the form I-601 and why he was accused of misrepresentation." *Form I-290B, supra*. The AAO notes that the record establishes that the applicant entered the United States on June 5, 2002, on a B-2 nonimmigrant visa with authorization to remain in the United States until June 19, 2002. On June 17, 2002, the applicant married [REDACTED] a United States citizen, in California. The applicant failed to depart the United States when his authorization expired. The record establishes that the applicant entered the United States on June 5, 2002 as a visitor for pleasure; however, the record reflects that his true intent was to remain in the United States permanently.

Additionally, the Department of State Foreign Affairs Manual (FAM) 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 the visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual, 9 FAM Visas § 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 ... Marrying and takes [sic] up permanent residence." *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 FAM, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant married within 30 days and applied for permanent residence within 60 days after entering on a B-2 visa. The marriage and application for permanent residence are violative conduct under the 30/60 day rule. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 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 of Immigration Appeals (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 notes that other than the applicant's wife's statement that she cannot leave her elderly parents in the United States by themselves, the applicant has not asserted that his wife will endure hardship should she relocate to Canada. The AAO acknowledges that the applicant's wife's parent's may suffer some hardship in being separated from her; however, the AAO notes that the applicant's wife's parent's are not qualifying relatives, and the applicant has not shown that hardship to his wife's parent's will elevate his wife's challenges to an extreme level. Additionally, the AAO notes that no documentary evidence has been submitted establishing that the applicant's parents-in-law are dependent on him and his wife or that there are no other family members who can assist his in-laws. In fact, the AAO notes that the record establishes that the applicant's wife's three sisters and one brother reside in the same area as their parents. *See psychiatric evaluation by [REDACTED] dated August 13, 2007.* In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges his wife will face outside the United States. The applicant bears the burden to show extreme hardship to his qualifying relative in these proceedings. *See section 291 of the Act, 8 U.S.C. § 1361.* In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Canada, the AAO does not find the applicant to have established that his wife would suffer extreme hardship upon relocation.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. On appeal, the applicant's wife states she and her parents would suffer "tremendous hardship" if the applicant returns to Canada. In a statement dated August 25, 2007, the applicant's wife states the applicant "has been [her] sole human source of comfort and [her] source of inspiration. He helps with care of parents and often comforts [her] as [she is] constantly ill and depressed at the thought of his deportation." The applicant's wife states she has been diagnosed with major depressive disorder, she is attending psychotherapy sessions, and she takes antidepressant medications. In a psychiatric evaluation dated August 13, 2007, [REDACTED] report that the applicant's wife "has become increasingly depressed and anxious." [REDACTED] and [REDACTED] diagnosed the applicant's wife with major depressive disorder and panic disorder, based on her numerous symptoms. The applicant's wife states that "[w]ith the care of [the applicant], psychotherapy sessions and medication, [she is] able to gain [her] emotional balance back and hold [her] job." She states "[r]ecently, [her] depression is more intense." The applicant's wife states that if the applicant returns to Canada, her mental disorder "will increase to the point that [she] may be incapable of caring for [her] parents [or] continuing with [her] job." As noted above, the record establishes that the applicant's wife's three sisters and one brother reside in the same area as their parents. *See psychiatric evaluation by [REDACTED]* However, the AAO notes the applicant's spouse's concerns regarding her mental health.

The applicant's wife also claims that she has constant pain "in [her] neck and head...due to bad consequences of being hit in 2 car accidents in 1999 and 2004." [REDACTED] and [REDACTED] state the applicant's wife suffered "a neck sprain from the first auto accident. She had neck, head and back injuries from the second and third accidents." The AAO notes that no medical documentation has been submitted establishing that the applicant's wife is suffering pain from any auto accidents. Additionally, the AAO notes that the record does not establish through documentary evidence that the applicant's wife

requires the assistance of the applicant because of her medical conditions. The applicant's wife states the applicant helps her "a lot, not just emotionally but with all the household tasks." Additionally, she states the applicant helps care for her elderly parents. In a statement dated August 25, 2007, the applicant states he helps his in-law's "with cooking, taking them to hospital, taking their medication, [and] buying grocers [sic] among others." The applicant's wife claims that her "father has a history of strokes and has been in and out of hospital." She also claims that her "mother has had partial memory loss, thyroid and hypertension." The AAO notes that no medical documentation has been submitted establishing that the applicant's wife's parents have been diagnosed with any medical condition(s) and the severity of their medical condition(s). Additionally, the AAO notes that the record does not establish through documentary evidence that the applicant's in-law's require the assistance of the applicant and/or his wife because of their medical conditions. Further, as noted above, the applicant's wife's parents are not qualifying relatives, and the applicant has not shown that hardship to his in-law's will elevate his wife's challenges to an extreme level. However, the AAO notes the applicant's wife's concerns.

The AAO has carefully considered the psychiatric evaluation regarding the mental health issues experienced by the applicant's wife. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and his wife's income and expenses; however, this material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.