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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

PUBLIC COPY

#15



DATE: **JAN 30 2012**

Office: MOUNT LAUREL, NJ

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:



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, Mount Laurel, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Turkey 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 obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 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 her 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 July 21, 2009.

On appeal, counsel asserts that the Field Office Director erred in his decision to deny the applicant's waiver application. Counsel contends that denial of the applicant's waiver request would result in extreme hardship to her spouse. *Form I-290B, Notice of Appeal or Motion*, dated August 12, 2009; *see also counsel's brief*, dated September 9, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant, her spouse, family members and friends; a letter from the applicant's son's school; psychological evaluations of the applicant's spouse and son; medical documentation relating to the applicant's spouse and father-in-law; letters from the applicant and her spouse's employer; W-2 Wage and Tax Statements for the applicant's spouse and tax documents; bank statements; and country conditions information on Turkey. The entire record was reviewed and all relevant evidence considered in reaching 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 the applicant entered the United States on November 11, 2002, using a passport and visa issued to another person. In that the applicant obtained admission to the United States with a passport and visa not lawfully issued to her, she procured an immigration benefit through fraud or the willful misrepresentation of a material fact and is inadmissible 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(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 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 (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that the denial of the applicant’s waiver request will result in medical, financial and psychological hardship for her spouse. Counsel states that the applicant’s spouse suffers from a medical problem with his feet and legs that causes swelling and intense pain, and that his doctors have advised him to limit the amount of time he spends on his feet. Counsel states that the applicant’s spouse needs to get off his feet when he gets home from work and that it would be extremely difficult and painful for him to take over the household and the care of his son and parents. Counsel claims that the applicant’s spouse will need bone surgery to treat his medical condition and that he will need the applicant’s assistance to care for his son and his parents. Counsel also states that the thought of being separated from the applicant and his son has resulted in psychological trauma for the applicant’s spouse. Counsel further asserts that the applicant’s spouse depends on the applicant’s income to meet their financial obligations, including the financial support of his parents.

In a statement dated June 1, 2009, the applicant’s spouse maintains that he suffers from a problem with his feet and legs, that he has to stay off his feet in the evenings and that without the applicant, it would be extremely difficult and painful for him to take over the household responsibilities and care for his son. The applicant’s spouse further states that he is financially supporting his parents as his mother does not

work and his father has a limited income, as well as medical problems that may require him to stop working soon. He asserts that he is in the process of buying a home where he will live with his family and his parents, and that he needs the applicant's income to meet their financial obligations and support his parents. The applicant's spouse's father states in a letter dated May 17, 2009, that he and his wife are dependent on the applicant's spouse and another son, with whom they currently live. The applicant's spouse's father reports, however, that he and his wife are planning to move in with the applicant's spouse as their other son is expecting a child.

The AAO acknowledges a September 8, 2009 medical note from [REDACTED] stating that the applicant's spouse is being treated for navicular bone exostosis, which will require surgery and that he will attempt to wear custom-made orthotic devices so that he can continue at his job. We also note a July 2, 2009 statement from [REDACTED] that reports he has treated the applicant's spouse since 2004 for an ongoing problem with his feet and legs, which makes it very difficult for him to stand and walk. He indicates that the applicant's spouse has been advised to wear special knee-length socks every day to limit the swelling and to get off his feet at the end of the day as it is one of the only ways to alleviate the swelling and pain that results from his condition.

In support of the psychological hardship of separation, the record includes a July 8, 2009 psychological evaluation of the applicant's spouse, prepared by [REDACTED], a Licensed Psychologist. [REDACTED] states that the applicant's spouse would suffer extreme and exceptional hardship if the applicant and her son leave for Turkey. He indicates that the applicant's spouse has become depressed and anxious as a result of his fear that he will soon be separated from the applicant, and reported symptoms that include sleep disturbance; poor appetite; difficulty focusing, concentrating, and paying attention; persistent sadness; chronic anxiety and crying spells. Based on his interview of the applicant's spouse, [REDACTED] diagnoses him with Adjustment Disorder with Mixed Anxiety and Depressed Mood – DSM-IV (309.28) and indicates that if the applicant leaves the United States for Turkey, her spouse's depressive symptomatology will become clinically exacerbated, and evolve into a Major Depressive Disorder. [REDACTED] further states that because the applicant's spouse's symptoms would be rooted in the reality experience of the separation itself, it would be very difficult to treat his depressive symptomatology either with antidepressant medication and/or supportive psychotherapy. [REDACTED] also indicates that in the event that the applicant's son is separated from his father, he will develop depressive symptomatology. Research, [REDACTED] states, has demonstrated that children who are separated from a parent for a significant period are at high risk for the development of separation anxiety, depressive symptomatology and symptoms of isolation.

The record also includes an undated statement prepared by [REDACTED], Licensed Clinical Social Worker and [REDACTED], Certified School Psychologist. The [REDACTED] indicate that they interviewed the applicant, her spouse and her son on July 4, 2009, and that based on the interview, they find that separation of the family "would be a travesty in more than one area." They observe that the emotional impact of the potential separation was expressed by the intermittent tears, rapid speech, perspiration and agitation of the family. They indicate that the applicant and her spouse had difficulty conceptualizing separation of the family. They state that the applicant's spouse reported to them that he is not sure that he could function adequately if the applicant and his son were not in the United States, and that he might not be able to concentrate sufficiently to carry on with his job responsibilities. They report

that the presence of both the applicant and her spouse is required for the benefit of their son and that the family's emotional solidarity at home is crucial for his continued emotional, social and academic development.

The AAO finds that the medical documentation in the record confirms that the applicant's spouse suffers from navicular problems, that his condition is severe and that it will affect his ability to care for his son in the absence of the applicant as he needs to remain off his feet once he completes his work day. However, the record reflects that the applicant's spouse currently resides with his parents and his brother, and further indicates that the applicant's spouse's parents will reside with him in the future, as evidenced by the statement from the applicant's spouse's father. While the AAO notes the applicant's father's documented health problems, no evidence in the record demonstrates that the applicant's spouse's parents and brother are currently unable to care for the family's household or assist him with his son. The record also fails to indicate that, in the future, the applicant's spouse's parents would be unable to assist him in discharging his household responsibilities or in caring for his son.

In considering the psychological evaluation in the record, we note that the input of any mental health professional is respected and valuable, but that the submitted reports fail to provide the type of detailed mental health analysis the AAO requires to reach an extreme hardship determination. While [REDACTED] concludes that the applicant's spouse suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood, his evaluation, based on a single interview, is largely a report of the applicant's spouse's history. It offers only limited information concerning the symptoms that [REDACTED] indicates the applicant's spouse has reported. Similarly, the evaluation by [REDACTED] and [REDACTED] reports their observations during their interview of the applicant and his family, but fail to provide an in-depth analysis of the mental or psychological impacts of separation on the applicant's spouse, the severity of these impacts or how they would affect his ability to perform his daily responsibilities, including his job.

[REDACTED] also asserts that the applicant's son will develop depressive symptomatology if separated from his father for a long period of time. [REDACTED] and [REDACTED] indicate that the fragmentation of the applicant's family will not be in the best interest of their son. While the AAO acknowledges the reports by these mental health professionals regarding the potential impact of separation on the applicant's son, we note that he is not a qualifying relative under section 212(i) of the Act and that any hardship to him must, therefore, be evaluated in terms of its impact on his father, the only qualifying relative in this case. These observations, however, are not based on actual evaluations of the applicant's son and, therefore, do not establish that relocation would result in emotional hardship to the applicant's son. Neither do they demonstrate how any emotional hardship experienced by the applicant's son would affect his father. Accordingly, the AAO finds the submitted mental health evaluations to be of limited value to a determination of extreme hardship in this proceeding.

The applicant's spouse claims that he needs the applicant's income to be able to meet the family's financial obligations and to financially assist his parents. The record, however, does not document that the applicant's spouse has financial obligations for which he requires the applicant's income. While he states that he needs the applicant's financial support because he is in the process of buying a house, the record fails to demonstrate the financial burden that this purchase will place on him. The submitted real

estate contract identifies the buyers of the property as the applicant's spouse, his brother and his father, and there are no mortgage documents in the record that demonstrate the applicant's spouse's financial investment in this purchase.

The AAO also notes the claim by the applicant's spouse that he is financially responsible for his parents. The record, however, does not contain any documentation to establish that the applicant's spouse financially supports his parents or that they require his support. Although the record documents that the applicant's spouse's father has several health conditions, no evidence in the record establishes the financial status. Moreover, the AAO notes that the applicant's spouse indicates in an August 27, 2009 statement that he came to the United States with a sister and brother to join his father and older brother. The record does not contain evidence to demonstrate that the applicant's brothers or sister are unwilling or unable to financially assist their parents. Accordingly, the record fails to support a determination that the applicant's removal would result in significant financial hardship to the applicant's spouse.

Based on the record before us, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to demonstrate that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and he remains in the United States without her.

Counsel asserts on appeal that the applicant and her son would face severe social stigmatization if they were to relocate to Turkey without the applicant's spouse. The applicant's spouse further contends that his son would be greatly affected by relocating to Turkey with the applicant. He states that he has been preparing his son for the American school system, teaching him the English language, that he knows very little Turkish and that it would be a great strain on him to attend school in Turkey because he would not be ready for the Turkish educational system.

In support of counsel's claim, the record contains a July 3, 2009 statement from the applicant's parents in which they indicate that marriage is very important in Turkish culture and that if the applicant returns to Turkey without her spouse, she and her son will find it difficult to survive. They state that society will look down on her; that opportunities for her would be scarce because in Turkish culture, separating the family unit is a social stigma; that society will view her as disgraced and dishonored for living without her spouse; and that her son will be teased and belittled.

While the AAO acknowledges the claims made by counsel and the applicant's spouse regarding the impact of separation on his son, we again note that the applicant and her son are not qualifying relatives under section 212(i) of the Act and any hardship to them must, therefore, be evaluated in terms of its impact on the qualifying relative. In this case, the record does not document that relocation would result in hardship to the applicant's son or that any such hardship would result in hardship for his father. We note the statement from [REDACTED], indicating that the applicant's son is registered in their Pre-Kindergarten program and that his teacher reports that he is performing well and meeting the expectations for his grade, and a one page internet printout on the National Education System in Turkey. This report does not provide detailed information on the educational system in Turkey or demonstrate that the applicant's son would have difficulty attending school there. While the AAO notes the statement from the applicant's parents, there is no documentary evidence in the record to support their claims as to how Turkish society would view the applicant and her

son in the absence of her 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)).

With regard to the hardship that would result from the applicant's spouse's return to Turkey, counsel asserts that it would negatively impact his brother's business as well as his own. Counsel claims that if the applicant's spouse sells his part of his business in order to relocate to Turkey, it would place the jobs of employees at the restaurant at risk as well as the financial future of his brother's restaurant.

In his June 1, 2009 statement, the applicant's spouse asserts that he has many responsibilities, which he cannot abandon. He states that he is financially responsible for his parents, that he is part owner of a restaurant and a chef at his brother's restaurant, and that as the chef, he oversees the running of the restaurant and that his presence is required for the continued viability of the restaurant. The applicant's spouse also states that he does not have prior employment experience in Turkey and that due to the high level of unemployment there, it would be difficult for him to find a job and provide for his family. Additionally, he states that with no family to rely on and no immediate source of income that it would be hard for him to find a place to live with his family.

In a statement dated August 12, 2009, the applicant's spouse's older brother, claims that the applicant's departure from the United States would have a detrimental impact on his business, a family-oriented restaurant. He states that the applicant's spouse is his chef, that he oversees the kitchen, that he is responsible for the daily specials and quality control, and that customers come in to see what his brother is serving each day and have come to trust in his ability, something that cannot be replaced. The applicant's spouse's brother contends that if the applicant's spouse returns to Turkey, his restaurant business will suffer tremendously.

The AAO acknowledges the preceding claims concerning the impact of relocation on the applicant's spouse. However, we do not find the record to support them. The AAO notes that the news articles in the record, report high levels of unemployment in Turkey, but they do not demonstrate that the applicant's spouse, who has acquired knowledge and skills in the restaurant business, would be unable to find employment in Turkey to support his family. While the applicant's brother claims that the applicant's spouse's relocation to Turkey would adversely affect his restaurant business, we observe that the applicant's spouse's brother is not a qualifying relative for the purpose of this proceeding and the record does not establish how any hardship he might experience would affect the applicant's spouse.

Accordingly, based on the evidence of record, the AAO finds that the applicant has failed to establish that her spouse would suffer extreme hardship if he relocated to Turkey with her.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.