

Identifying data deleted to
protect privacy information
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

[Redacted]

H5

DATE: **JUN 21 2012**

OFFICE: DETROIT

[Redacted]

IN RE: [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:

[Redacted]

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Montenegro 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The record reflects that the applicant, on October 23, 1993, presented a photo-substituted passport to gain entry to the United States. The applicant was placed in exclusion proceedings and ordered excluded by an immigration judge on June 10, 1996, after his asylum application was denied.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his United States citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 22, 2009.

On appeal, counsel for the applicant asserts that the field office director failed to properly weigh the hardship factors and the context of the applicant's misrepresentation and should consider the applicant's waiver application *nunc pro tunc* under the pre-IIRIRA version of the Act, which allowed the U.S. citizen or lawful permanent resident children of an applicant to be qualifying relatives.

In support of the waiver application and appeal, the applicant submitted letters from himself and from his spouse, financial documentation, medical documentation concerning his children, background information for Montenegro, and a letter of support. 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:

- (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.

Section 212(i) of the Act provides:

- (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

¹ Counsel for the applicant contends that the context of the applicant's misrepresentation should be considered, as he applied for asylum in the United States. The applicant's asylum application was denied by an immigration judge on June 10, 1996 due to the applicant's lack of credibility. The Board of Immigration Appeals affirmed the immigration judge's decision on October 15, 1997.

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 (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...

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 applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship that the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a thirty-nine year-old native and citizen of Montenegro. The applicant's spouse is a thirty-six year-old native of Montenegro and citizen of the United States. The applicant and his spouse are currently residing with their children in Shelby Township, Michigan.

Counsel for the applicant contends that the applicant's Form I-601 application should be considered under the pre-IIRIRA version of the Act, which allowed the U.S. citizen or lawful permanent resident children of an applicant to be qualifying relatives. Accordingly, counsel asserts that the hardship to the applicant's U.S. citizen children should be considered in addition to the hardship to the applicant's spouse. Counsel relies upon *Patel v. Gonzales*, in asserting that DHS has the authority to issue *nunc pro tunc* orders granting waivers under the pre-1996 version of the Act. *Patel v. Gonzales*, 432 F.3d 685 (6th Cir. 2005). It is noted that the court in *Patel v. Gonzales* held that even if the applicant's misrepresentation were considered under the pre-1996 version of the Act, his children would not count as qualifying relatives because they were not U.S. citizens at the time of the misrepresentation. *Id.* Similarly, this applicant's misrepresentation took place October 23, 1993 and the applicant's first child was not born until December 23, 2004. As such, the applicant's children would not be qualifying relatives in the context of the applicant's Form I-601 application even if it were considered under the pre-IIRIRA version of the Act. As noted above, the applicant's U.S. citizen spouse is the only qualifying relative for his Form I-601 application.

The applicant's spouse asserts that she wants their children to be raised with both a mother and father and that she would be unable to visit her husband in Montenegro because of her son's health issues in Montenegro. It is initially noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would suffer will only be considered insofar as it affects the applicant's spouse. Counsel for the applicant asserts that the applicant's spouse's parents and siblings also reside in Michigan and there is no information concerning the extent to which they can assist her with raising her children. In addition, there is no indication that the applicant's spouse would be unable to visit her husband in Montenegro on her own. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties. However, there is no indication that the emotional hardship suffered by the applicant's spouse would be so serious that she would be unable to continue with her employment or care for their children or otherwise carry out her daily activities.

The applicant's spouse asserts that she would be unable to financially support her children in the absence of the applicant. Counsel for the applicant indicates that the applicant's spouse has been employed by [REDACTED] since 2004. The only financial documents submitted with the Form I-601 application and appeal consists of a tax return from 2009. There is no accounting of the applicant's spouse's monthly financial obligations or the extent to which her family members would be able to provide her with financial assistance. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). There is insufficient evidence in the record to find that the applicant's spouse would suffer a level of hardship beyond the common results of inadmissibility or removal upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Montenegro because of her ties to the United States, the possibility of unemployment in Montenegro, and the severe allergies suffered by her children. Specifically, counsel contends that the applicant's son suffered from a severe allergic reaction in Montenegro, barely survived because of the lack of medical support, and would be unable to get his medication in Montenegro. The record contains a letter from a Michigan physician stating that the applicant's oldest son has severe asthma, outside allergies, eczema, and has been hospitalized for severe food allergies. The letter further states that the applicant's son needs access to a nebulizer, epi-pen, and is stable on medications. The record also contains a letter from a physician in Montenegro, which states that the applicant's son stayed in Montenegro four years ago, suffered symptoms related to an allergic reaction, and his parents were advised to take him to Michigan because Montenegro is an inconvenient environment. It is noted that there is no evidence that the applicant's son, as indicated by counsel, barely survived an allergic reaction in Montenegro due to a lack of medical resources. In addition, though counsel and the applicant's spouse assert that the applicant's son would not have access to his medication in Montenegro, there is no evidence supporting that assertion.

Counsel for the applicant asserts that the applicant's spouse's parents and siblings reside in the state of Michigan and that the applicant's spouse would have to leave them, her parish, and her employment behind if she relocated to Montenegro. Initially, it is noted that the applicant's spouse is a native of Montenegro and there is no information in the record concerning her ties to

that country. It is further noted that the applicant's spouse, in her submitted letter, does not mention the hardship of leaving her family, her parish, and employment behind upon relocation to Montenegro. The record also does not contain any letters of support from the applicant's spouse's family members.

Counsel for the applicant contends that it would be a financial hardship for the applicant's spouse to relocate to Montenegro because of the unemployment rate. It is noted that the applicant is self employed as a business owner in the United States and there is no indication that he would be unable to open a business upon relocation to Montenegro. It is also noted that there is no information in the record concerning the extent to which the applicant's spouse would be able to rely upon the applicant's or her relatives in Montenegro to assist with relocation. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Montenegro.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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.

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. 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.