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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

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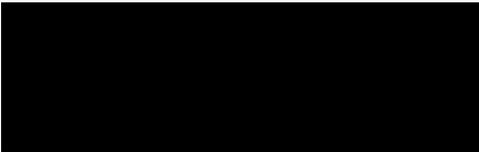
OFFICE: HONOLULU

FILE:

IN RE:

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,

Maria Feli

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, 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 and citizen of Tonga who falsely claimed that he was married and that his father was not residing in the United States on a nonimmigrant visa application. The District Director found the applicant 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 having attempted to procure a visa to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchild.

The District 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 District Director*, dated August 6, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship if separated from her husband, both emotionally and because he provides childcare while she is working. Counsel further asserts that the applicant's spouse would suffer extreme hardship if she relocated to Tonga because she would leave behind her ties in Honolulu, including employment, and it would be difficult for her son to adjust to life in Tonga.

In support of the waiver application and appeal, the applicant submitted family photographs, identity documents, letters of support, financial documentation, a letter from his stepson, letters from his spouse, and background information concerning Tonga. 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 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 his stepchild would experience if the waiver application were denied. It is noted that Congress did not include hardship to stepchildren as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's stepchild 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 forty-six year-old native and citizen of Tonga. The applicant's spouse is a fifty-two year-old native of Tonga and citizen of the United States. The applicant and his spouse are currently residing with her son in Honolulu, Hawaii.

The applicant's spouse asserts that she would be desperate if the applicant returned to Tonga because he is the only gentleman she has met in her life. She also contends that she would have to leave her job because nobody could care for her son while she works. Finally, the applicant's spouse states that she has medical problems, such as diabetes and high blood pressure, and separation from her spouse would adversely affect her physical conditions. It is noted that the record does not contain any supporting documentation concerning any of the applicant's spouse's physical ailments. The record also does not contain any documentation concerning the applicant's spouse's psychological condition. There is no indication as to why the applicant's spouse would be unable to hire somebody to care for her son while she is working. It is also noted that the record contains a letter from the applicant's stepson's biological father, which states that he is willing to do anything that is needed to help raise his child. The record also contains letters of support written on behalf of the applicant stating that the applicant's spouse has not been successful in prior relationships, but is truly happy with her current husband. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record establishes that the applicant's spouse would suffer from a level of emotional hardship due to separation from the applicant. 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 care for her child and continue to support her family. There is insufficient evidence in the record to find that the applicant's spouse would suffer a level of emotional hardship beyond the common results of inadmissibility or removal if separated from the applicant.

The applicant's spouse states that she would suffer financial hardship if she were separated from her husband. As noted above, the applicant's spouse states that she would have to leave her job to care for her son, but does not indicate why her son's father could not act as a caretaker or other childcare could not be arranged. Counsel for the applicant also states that the applicant's spouse and stepson would be financially unable to visit the applicant if he lived in Tonga. Further, the

applicant's stepson submitted a letter stating that if the applicant were not in the United States, his mother would have to work a lot and he would see her less. It is initially noted that the applicant's stepson is not a qualifying relative in the context of this application so that any hardship he would suffer will only be considered insofar as it affects the applicant's spouse. In addition, though the applicant submitted a page of sample airfares from Honolulu to Tonga, the applicant's spouse does not state that she would be unable to afford to travel to visit her husband in Tonga. It is further noted that the applicant's spouse submitted a Form I-864 on her husband's behalf, which indicates that she earned an income of \$86,736.00 in 2008. There is no evidence that the applicant's spouse would have to work more hours to support herself in the applicant's absence or that she would be financially unable to travel to Tonga. The record contains insufficient evidence to find that the applicant's spouse would suffer financial or other hardships beyond the common consequences of inadmissibility or removal due to separation from the applicant. Also, 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).

Counsel for the applicant asserts that the applicant's spouse would experience extreme hardship upon relocation to Tonga because she would leave behind her friends, church, employment, and health insurance for her daily medications. Counsel further contends that there would be no financial support for the applicant's spouse's family in Tonga and that her son is not familiar with the country. As noted above, the record does not contain any documentation concerning the applicant's spouse's medical ailments or treatments. As also previously noted, the applicant's spouse's son is not a qualifying relative in the context of this application and his hardship is considered only in the context of the applicant's spouse. In support of counsel's assertions, the applicant submitted background information stating that the per capita income in 2008 for Tonga is significantly lower than the applicant's spouse's income in the United States and that in fiscal years 2003 and 2004, the unemployment rate was thirteen percent. However, the record does not contain evidence that the applicant and his spouse, both natives of Tonga, would be currently unable to find employment if they relocated to Tonga. There is no information concerning the prior occupations of the applicant and his wife during their previous residence in Tonga. Further, there is no information concerning the extent to which the applicant's and the applicant's spouse's family members residing in Tonga could assist in their relocation. 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)). It is noted that the applicant's spouse, in her submitted letter, does not state that it would be a hardship for her to relocate to Tonga. In addition, the record reflects that the applicant's spouse is a native of Tonga, speaks the language, and has family members currently residing in Tonga. 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 Tonga.

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) and 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.