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



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 17 2012** OFFICE: PHILADELPHIA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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, Philadelphia, Pennsylvania and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen [REDACTED]. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact in order to gain admission to the United States. 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 U.S. citizen spouse.

[REDACTED] concluded that the applicant failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, in this case his U.S. citizen spouse, and denied the application accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility but states that the applicant's U.S. citizen spouse will suffer extreme hardship.

In support of the application, the record contains, but is not limited to, a brief from counsel for the applicant, a psychological evaluation of the applicant's spouse and children, medical records for the applicant's son, a declaration from the applicant's spouse, declarations from the applicant, biographical information for the applicant, his spouse, and their children, financial information for the applicant's business, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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, 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 applicant states that he obtained admission to the United States [REDACTED] using the Polish passport and U.S. visa of another individual. The applicant also states that he applied for immigration benefits in the United States previously and did not disclose his admission to the United States using fraudulent documentation. As such, the applicant is inadmissible under INA § 212(a)(6)(C) for having used fraud or misrepresentation to procure admission and other immigration benefits under the Act. The applicant does not contest his inadmissibility on appeal.

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.

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 in this case is the applicant's U.S. citizen spouse. Hardship to the applicant or his U.S. citizen children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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).

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.

Counsel for the applicant states that the applicant’s spouse will suffer extreme hardship if the applicant is not permitted to remain in the United States, citing the applicant’s spouse’s family ties in the United States, her two young children, and her emotional and financial dependence on the applicant. In regards to financial hardship, the applicant’s spouse states that the applicant is the primary breadwinner for the household. The record indicates that the applicant has worked in the transportation business and, as [REDACTED] ran his own business, [REDACTED]. The applicant states that his gross pay varied from week to week, averaging \$4,500.00 per month. The applicant’s spouse states that she has assisted the applicant with his business, but otherwise has not worked outside the home. The applicant’s spouse, however, has not stated why she is unable to work outside the home. Although the applicant’s spouse states that her husband drives a truck and she would be unable to perform that work in his absence, she has not stated why she is unable to obtain other work. She also states that her entire nuclear family including her parents and three siblings are U.S. citizens and reside in the United States, but she has not stated what assistance, if any, she is able to obtain from her family. Although the record establishes that the applicant’s spouse presently relies on the applicant’s income, the record does not establish that she would be unable to support herself if she were to remain in the United States without the

applicant. Additionally, the record does not contain any evidence of the applicant's spouse's expenses or her stated debt.

Counsel for the applicant also states that the applicant's spouse would suffer from emotional hardship if she is separated from her spouse. The record indicates that [REDACTED] Ph.D, J.D., conducted a forensic evaluation of the applicant's spouse and her children and determined that the applicant's spouse is suffering from Major Depressive Disorder and that the applicant's 10 year-old-son is suffering from Separation Anxiety Disorder. The applicant's spouse reported to [REDACTED] that she "is very concerned about the children's well-being in the absence of their father." Although the AAO respects the opinion of [REDACTED] and takes note of her conclusion that the applicant's spouse is very dependent on the presence of her husband, the evidence, when considered in the aggregate, does not suggest that the applicant's spouse would suffer from hardship that rises to the level of extreme. The applicant's spouse's financial and emotional concerns about surviving as a single parent appear to be the type of concerns typically experienced by families separated due to immigration violations.

Counsel for the applicant also states that the applicant's spouse would be unable to relocate to Poland. The record establishes that the applicant's spouse is a native [REDACTED] but became a U.S. citizen [REDACTED]. The applicant's spouse states that she has resided in the United States since she was 12 years old and that her entire nuclear family resides in the United States. The applicant's spouse states that her children do not read or write [REDACTED] and that "[m]oving them to [REDACTED] would cause a huge setback in their educational development." The applicant has also submitted evidence that one of his children has undergone surgery – "bilateral myringotomy with insertion of tubes and adenoidectomy." The AAO notes that hardship to the applicant's children is not relevant under the statute unless it is established to cause hardship to the qualifying relative – the applicant's spouse. Moreover, the letter from the applicant's child's physician does not mention the need for any ongoing care as a result of the applicant's child's surgery. Although the need for ongoing care is mentioned in the report by [REDACTED] the record does not indicate that Dr. [REDACTED] is a medical doctor or that she has examined or treated the applicant's son for his medical conditions. The AAO also notes that there is no indication in the record that the applicant's child would be unable to obtain medical care [REDACTED]. The applicant's spouse indicates that wishes to remain in the United States in order to provide her children with a good education, however, the inability to pursue certain educational goals for your children is not the type of hardship that can be distinguished from the ordinary hardship suffered by individuals as a result of a family member's inadmissibility. Although the AAO notes the applicant's spouse's difficult situation, the record does not establish that the hardships she would face upon relocation [REDACTED] rise to the level of "extreme" as contemplated by statute and case law.

Although the applicant's spouse's concern 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. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate, the AAO is unable to conclude that the applicant’s spouse would suffer extreme hardship.

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 her qualifying relative as required under INA § 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 he 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.