



U.S. Citizenship  
and Immigration  
Services

415

[REDACTED]

Date: NOV 03 2012

Office: DENVER

FILE: [REDACTED]

IN RE:

Applicant: [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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Hungary, 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 procuring a visa and admission to the United States through fraud or misrepresentation. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is the beneficiary of an approved Form I-360 as the self-petitioning spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

In a decision dated October 6, 2010, the Field Office Director found that the applicant failed to establish that she would experience extreme hardship as a consequence of her inadmissibility under section 212(a)(6)(C)(i), and the applicant had not established a basis for a waiver under 212(a)(9)(B)(i) because she had not shown a substantial connection between her abuse by a United States citizen spouse and the violation of the terms of her nonimmigrant visa. The application was denied accordingly. *See Decision of the Field Office Director* dated October 6, 2010.

On appeal, the applicant's counsel contends in the Notice of Appeal (Form I-290B) that the Service erred in finding the applicant did not establish that her departure from the United States would cause extreme hardship. Counsel also asserts the Service erred in finding the applicant inadmissible under section 212(a)(9)(B)(i), contending the ground does not apply to VAWA applicants who "first entered" prior to IIRIRA, and that the applicant is not required to show a connection between her overstay and subsequent departure to be excepted from this ground of inadmissibility. Further, counsel points out that more than 10 years have passed since the applicant's departure from the United States that would have triggered the 10-year-bar.

With Form I-290B the applicant submits a brief from counsel; an affidavit from the applicant; the applicant's declaration in support of her I-360 petition; health insurance card; a letter from a physical therapist; medical documentation; a letter from the applicant's employer; a letter from a bank about the applicant's account; country information about Hungary; an evaluation from a licensed clinical psychologist; the applicant's I-360 approval notice; letters from friends in support of the applicant; and a letter from a cousin addressing conditions in Hungary.

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(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(i) of the Act provides, in pertinent part:

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) . . . if it is established to the satisfaction of the Attorney General (Secretary) . . . 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.

The record shows the applicant entered the United States as a B-2 visitor in March 1995, departing in September 2000. The applicant returned to the United States as a B-2 visitor in January 2001, but concealed her previous overstay when applying for a new B-2 visa, stating that she had only been in the United States for two weeks after her 1995 entry.<sup>1</sup> As such, the AAO will address the applicant's eligibility for a waiver under section 212(i) of the Act.

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.

---

<sup>1</sup> The AAO finds there is no need to determine inadmissibility under section 212(a)(9)(B) of the Act, as the applicant is also inadmissible under section 212(a)(6)(C)(i), and the requirements for a waiver under section 212(i) of the Act are the same as those for a waiver for unlawful presence under section 212(a)(9)(B)(v).

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.

In a brief the applicant's counsel points to the psychological evaluation concluding that the applicant suffers from anxiety and a feeling of hopelessness with a return to Hungary likely to cause depression requiring intensive therapy. Counsel asserts that mental health services are not generally accessible in Hungary. Counsel also asserts that living conditions in Hungary are poor with high unemployment, whereas the applicant has lived more than 15 years in the United States, being employed and having community involvement and good moral character. Counsel asserts that if the

applicant returned to Hungary her family there would be unable to support her while losing the financial assistance they now receive from the applicant.

In her declaration the applicant states that she is accustomed to the culture in the United States and that during her brief visit to Hungary in 2000 she observed emotional and financial struggles there. The applicant states that if she returns to Hungary she would need to rely on her elderly parents for living arrangements while their bills are already higher than their pension. The applicant states that being unable to send money to her parents from the United States would be devastating to her. The applicant states that since she has not been part of the workforce in Hungary she would not qualify for retirement because it is linked to taxes. The applicant further states that she has developed chronic lower back pain, and that psychological care and therapy she needs are difficult to find in Hungary. The applicant states that she does not now attend therapy on a regular basis because she cannot afford it, but she has a session with a professional as needed. The applicant states that she has heard from people in Hungary that psychological care is hard to find and not a largely accepted form of help. The applicant contends she will need professional help and can now express herself better in English and Hungarian.

The previously-submitted psychological evaluation notes the applicant has a pervasive feeling of helplessness having lived in the United States so many years with the fear of an uncertain future. The evaluation states that the applicant would be emotionally devastated to go back to Hungary, remembering the depression she experienced when visiting Hungary. The evaluation notes the applicant is worried about poor health care and high unemployment in Hungary. The evaluation goes on to state that the applicant is the victim of spousal abuse and that should she be forced to return to Hungary the helplessness she experienced would return, magnifying depression, anxiety, and post-traumatic stress syndrome. The evaluation refers to the applicant as being in survivor mode needing counseling whether or not she departs the United States. The evaluation concludes that if forced to leave the United States the applicant will be clinically depressed and need intensive therapy and probably anti-depressant medication, all of which are hard to find in Hungary. The evaluation surmises there is a stigma attached to therapy among Europeans and people such as the applicant usually go untreated.

A letter from a physical therapist recommends the applicant seek an orthopedic back specialist for evaluation.

A World Health Organization report submitted by the applicant states that “Mental health problems (high depression and suicide rates) represent a key problem in Hungary....” The report also indicates that a migration of health professionals is a concern as is lowered government expenditure on health and pharmaceuticals while private expenditure is “quite high”.

A Department of State report submitted by the applicant states the national minimum monthly wage did not provide a decent standard of living for a worker and family.

The AAO finds that the applicant has failed to establish she will suffer extreme hardship as a consequence of being inadmissible to the United States. The applicant asserts she will experience

emotional hardship if she were forced to return to Hungary, having become accustomed to the culture of the United States while contending she will not be able to access mental health care or other health care in Hungary. The psychological evaluation contends there is a stigma on mental health care in Europe, but the applicant submitted no documentary evidence to support the assertion that there is little access to mental health care or a social stigma attached to seeking care. Although the WHO report indicates deficiencies in health care in Hungary it does not support a finding of extreme hardship. The AAO also notes that while the applicant has lived in the United States for most of the past 17 years, she came as a young adult rather than a child and though she has relatives living in the United States, her immediate family, parents and a sibling, still lives in Hungary.

The applicant also asserts financial hardship, however has submitted little documentary evidence that she would be unable to support herself in Hungary other than a Department of State country report that indicates minimum does not support a decent standard of living. Assertions cannot be given great weight absent supporting evidence. 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)). 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, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant, considered in the aggregate, rises 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 as required under section 212(i) of the Act. As the applicant has not established extreme hardship, 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.