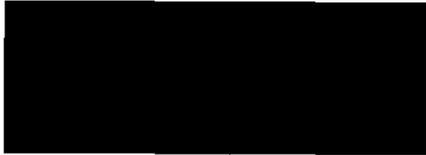




U.S. Citizenship
and Immigration
Services



115

DATE: NOV 29 2012 OFFICE: ATHENS, GREECE FILE: [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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Greece 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 having sought a benefit under the Act through fraud or willful misrepresentation and section 212(a)(9)(A) of the Act, 8 C.F.R. § 1182(a)(9)(A), for having been ordered removed from the United States. She is the fiancée of a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. Based on her denial of the Form I-601, the Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, as a matter of discretion. *Field Office Director's Decision*, dated May 13, 2011.

On appeal, the applicant asserts that the Field Office Director erred in finding her inadmissible under section 212(a)(6)(C)(i) of the Act and in concluding that her fiancé would not suffer extreme hardship if the waiver application is denied.¹ *Form I-290B, Notice of Appeal or Motion*, dated June 9, 2011.

The record includes, but is not limited to, the following evidence: a letter from the applicant's prior counsel; statements from the applicant's fiancé; documentation relating to the applicant's fiancé's business, home ownership and financial obligations; copies of an AAO decision, dated January 16, 2009 and excerpts from the Adjudicator's Field Manual; and country conditions information on Greece. The entire record was reviewed and all relevant evidence considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states in pertinent part:

- (i) **In general.** 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

¹ The record indicates that the applicant was previously represented. However, the AAO does not find the record to contain a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, pursuant to the regulation at 8 C.F.R. § 292.4(a). The regulation and the instructions to the Form I-290B require that a "new [Form G-28] . . . be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010). As the appeal was filed on June 14, 2011 and the most recent Form G-28 in the record is dated September 13, 2009, the applicant is considered self-represented.

documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The Field Office Director indicated in her decision that a consular officer had found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act based on her July 16, 2006 attempt to enter the United States as a tourist, when she was coming to the United States to study. She further noted that the applicant had been denied a student visa on June 6, 2006.

The record reflects that, on July 16, 2006, the applicant arrived at Charlotte Douglas International Airport with a valid B-1/B-2 visa and sought admission to the United States as a tourist, indicating that she planned to visit a friend in Spartanburg, South Carolina for 45 days. In secondary inspection, Customs and Border Protection inspectors searched the applicant's luggage and found letters that indicated she had been accepted as a student by Greenville Tech; a Form I-20, Certificate of Eligibility for Non-immigrant (F-1) Student Status, showing that she was to start school in August; letters of reference from her university in Greece; text books and other school-related items.

On appeal, the applicant asserts that she should not have been found inadmissible based on the Form I-20 found in her luggage. She contends that as the Form I-20 is a document used to support a visa application rather than an entry document, it should not be considered "other documentation" for the purposes of section 212(a)(6)(C)(i) of the Act. The applicant, however, misunderstands the basis on which she was found inadmissible to the United States. Her admission was not barred based on her possession of a Form I-20, but because she sought admission as a tourist when it was her intent to attend school in the United States, a status for which she did not have the appropriate nonimmigrant visa.

The AAO notes that for a misrepresentation to bar admission to the United States under section 212(a)(6)(C)(i) of the Act, it must be material. The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, legacy Immigration and Naturalization Service (now USCIS) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

Based on the evidence of record, the AAO concludes that the applicant misrepresented her intent when she sought to enter the United States as a tourist on July 16, 2006. Further, by claiming to be a tourist, the applicant attempted to shut off a line of inquiry that was relevant to her eligibility for admission, i.e., whether she was appropriately documented to enter the United States as a foreign student. Accordingly, the applicant's misrepresentation of herself as a tourist at the time she sought admission to the United States on July 16, 2006 is a material misrepresentation and bars her admission to the United States pursuant to 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would result in extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other family members will be considered only insofar as it results in hardship to a qualifying relative, which in the present case is the applicant's fiancé. 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*, 21 I&N Dec. 296, 301 (BIA 1996). The applicant's U.S. citizen fiancé is the only qualifying relative in this case.

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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, etc., 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 her fiancé would experience extreme hardship as a result of her inadmissibility.

In January 22, 2010 and June 6, 2011 statements, the applicant's fiancé states that he is socially and economically well-established in the United States. He states that he owns a 50 percent interest in a restaurant business and that his annual income from his business interests ranges

between \$50,000 and \$65,000. The applicant's fiancé also states that he owns a home worth approximately \$190,000 on which he owes \$148,722.52. He further states that it is financially onerous to support the applicant and his son in Greece and that he is required to use money for travel that he could otherwise spend on them.

The applicant's fiancé further states that if the waiver application is denied and he remains in the United States, he will be separated from the applicant and his son, both of whom he loves very much. He states that his son is almost three-years-old (now four-years-old) and can see him only via Skype. He states that he cannot bring his son to the United States for a visit as he and the applicant are not married and that under Greek law the applicant has full custody of the child. The applicant's fiancé notes that if the applicant refuses to allow their son to travel abroad, he would not be able to bring his son to the United States until he is 18 years-of-age.

In support of the applicant's fiancé's claims, the record includes documentation that establishes his ownership of a restaurant business and that his personal income for tax years 2004 through 2008 ranged between \$50,035 and \$64,296. It also reflects that the applicant's fiancé owns a home on which, as of April 22, 2011, he owed \$144,050.91, that his restaurant business has an outstanding loan of \$273,082.59, and that his credit card debt totals \$1,624.70.

While the AAO does not doubt that the applicant's fiancé is experiencing hardship as a result of their separation, we do not find the record to establish that this hardship exceeds that which is normally created by the separation of families. The applicant's claim that his support of the applicant and his son is financially onerous is not supported by the record. No documentary evidence establishes that the applicant's fiancé is providing financial support to the applicant or the amount of that support. Further, the record does not contain evidence of the full range of the applicant's fiancé's monthly financial obligations and, therefore, provides an incomplete picture of his financial circumstances. 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)).

The AAO also notes that the applicant's prior counsel in a February 25, 2010 letter asserts that the applicant's fiancé's separation from the applicant would result in psychological and emotional hardship for him. This claim is not, however, documented in the record, e.g., by a psychological evaluation or other medical evidence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Absent further evidence of the hardships that would be experienced by the applicant's fiancé, the AAO is unable to find that he would experience extreme hardship if the waiver application is denied and he remains in the United States without the applicant and his son.

In his statements, the applicant's fiancé asserts that he is economically well-established in the United States and that relocation to Greece would result in financial hardship for him as it would require him to abandon all of his gains in the United States and to face an uncertain future in Greece, where he would have no work, no assets, no business and no home. He states that if he moved to Greece, he would have to sell his interest in his restaurant business and his home, losing money on both as a result of current economic conditions in the United States. The applicant's fiancé further contends that even with the sale of his business and property, he would not be able to pay all his debts, including his mortgages and credit cards balances, and would leave the United States as a pauper. He states that his relocation to Greece would also create hardship for the individual with whom he owns his restaurant business, as his partner would have to find a new investor, which could result in the loss of employment for some of their employees.

The applicant's fiancé also maintains that Greece is facing an economic recession much worse than that in the United States and that the Greek government is dependent on the European Union and the International Monetary Fund for its funds. He states that in Greece, the high rate of unemployment and his age would make it difficult for him to find employment. As a result, he asserts, he would have no money to support the applicant and his son or to repay his debts in the United States. He also contends that relocation would separate him from his family in the United States, including his brother and cousins, as well as friends.

As previously discussed, the record establishes the applicant's fiancé's joint ownership of a restaurant business and also reflects that he owns a home with a mortgage on which he owes \$144,050.91. It further demonstrates that his restaurant business has an outstanding loan of \$273,082.59, and that his credit card debt totals \$1,624.70. The record also contains printouts of several online media articles addressing the Greek financial crisis and the country's record levels of unemployment.

Although the AAO acknowledges the applicant's fiancé's claims regarding the financial hardship that would result from relocation, the record contains insufficient evidence to support them. No documentation in the record establishes the nature or extent of the applicant's fiancé's involvement in the restaurant business he co-owns and, therefore, we cannot find that returning to Greece would require him to relinquish his interest in the business or the income it provides. Neither does the record demonstrate that, if the applicant's fiancé were to sell his share of the business he owns and his home, the proceeds would not cover his debts. Further, while we acknowledge the economic crisis in Greece and its high levels of unemployment, general economic or country conditions in an alien's native country do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *See Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). We also note that the record contains a Form G-325A, Biographic Information, for the applicant and one for her fiancé, which indicate that both have parents living in Greece. No evidence in the record indicates that the families of the applicant or her fiancé would be unable or unwilling to provide them with financial or other types of assistance.

With regard to the applicant's fiancé's claim that relocation would require him to leave behind family and friends in the United States, the AAO does not find the record to demonstrate the extent or the impacts of the emotional hardship that would be created by such separation, e.g., a psychological evaluation. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra.*

Therefore, based on the record before us, the AAO cannot find that relocation would result in extreme hardship for the applicant's fiancé. Accordingly, the applicant has not established that her inadmissibility would result in extreme hardship for a qualifying relative, as required for a waiver under section 212(i) of the Act.

In her decision, the Field Office Director also denied the applicant's Form I-212 as a matter of discretion, based on the denial of the Form I-601. Although the AAO also found the applicant to be ineligible for a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, we will, nevertheless, consider the applicant's eligibility for an exception under section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On July 17, 2006, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act, rendering her inadmissible for a period of five years. As the bar to the applicant's admission under section 212(a)(9)(A)(i) of the Act expired as of July 17, 2011, she is no longer inadmissible to the United States on this basis. Accordingly, she is not required to file the Form I-212.

The record does not establish that the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act would result in extreme hardship for a qualifying relative. She is, therefore, not eligible for a section 212(i) waiver. In that the applicant is statutorily ineligible for relief under the Act, the AAO finds no purpose would be served by considering where she is eligible for 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. *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 will be dismissed.