

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



U.S. Citizenship  
and Immigration  
Services

715

[REDACTED]

DATE: OCT 17 2012

Office: BLOOMINGTON

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.

Thank you,

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Bloomington, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained. The waiver application is approved.

The record establishes that the applicant is a native and citizen of Indonesia who procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the applicant procured entry to the United States in 2004 by presenting a fraudulent passport and U.S. visa. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 2, 2010.

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...

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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the applicant's spouse's family can be considered only insofar as it results in hardship to a qualifying relative. 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).

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 U.S. citizen spouse contends that he will suffer emotional, professional and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse explains that he loves his wife very much and she is his life partner and long-term separation from her would cause him hardship. In addition, the applicant's spouse explains that he is a fill-in mail carrier but since it is not a full-time position, he has to obtain his health insurance through his wife's employment and were she to relocate abroad, he would not have medical coverage. Further, the applicant's spouse details that he is currently enrolled in a two year program to obtain a degree as an automotive technician but without his wife's financial support, he would not be able to continue his studies. Moreover, the applicant's spouse outlines that although he is employed, without his wife's full-time gainful employment he would not be able to afford to pay his house payment, his student loan payments and other expenses, thereby causing him financial hardship. Finally, the applicant's spouse details that he suffers from depression and long-term insomnia and the added stress due to his wife's uncertain immigration status exacerbates his conditions. *Affidavit of* [REDACTED] dated January 24, 2011.

In support, medical documentation has been provided establishing that the applicant's spouse is suffering from insomnia and anxiety and is under treatment, including a sleep study and numerous prescription medications. Said documentation further documents that the applicant's spouse should continue seeking treatment and any increased stress or life challenges would very likely exasperate the applicant's spouse's symptoms and render him incapable of meeting daily obligations. *Letter from* [REDACTED] dated January 17, 2011. In addition, a psychological evaluation has been provided from [REDACTED]. In said evaluation, [REDACTED] discusses the applicant's spouse's history of physical abuse as a child, depression and heavy alcohol use and concludes that the applicant's spouse remains at high risk of experiencing exacerbated, severe symptoms of depression and anxiety in the event that his wife is deported. [REDACTED] notes that the applicant's spouse has limited coping resources and without question his wife is his primary source of emotional support. *Report from* [REDACTED] dated January 20, 2011. In addition, evidence of the applicant's spouse's fill in carrier position, without benefits, is provided. *Letter from* [REDACTED]. Moreover, evidence of the applicant's gainful full-time employment has been provided. *Letter from* [REDACTED] dated March 15, 2010. Further, documentation establishing the applicant's spouse's enrollment at Dunwoody College of Technology has been provided. Finally, documentation has been provided outlining the applicant's financial obligations, including student loans, credit card debt and a home mortgage.

The record reflects that the cumulative effect of the emotional, professional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibly rises to the level of

extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

The applicant's spouse contends that he would experience extreme hardship were he to relocate abroad to reside with his wife due to her inadmissibility. To begin, he explains that he was born in the United States and has no ties to Indonesia and unfamiliarity with the country, languages spoken, culture and customs would cause him emotional hardship. In addition, the applicant's spouse notes that he has been gainfully employed for over six years with the United States Post Office in Andover, while at the same time, enrolled at Dunwoody School of Technology to obtain a degree, and relocation would cause him career and professional hardship. Moreover, the applicant's spouse details that he is very close to his family, including five siblings, his mother and his step-father, his church and his community and long-term separation from them would cause him hardship. Finally, the applicant's spouse details the problematic economy and substandard health care in Indonesia. *Supra* at 1-5.

The record establishes that the applicant's U.S. citizen spouse was born and raised in the United States and has no ties to Indonesia. He is unfamiliar with the language, culture and customs of the country. He would have to leave his siblings, his mother and step-father, his employment, his pursuit of a degree, his church, his community and the medical professionals familiar with his conditions and treatment plan and he would experience a reduction in his standard of living. Finally, counsel has provided numerous articles regarding substandard wages, high unemployment and crime in Indonesia. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the

existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant were to return to Indonesia, regardless of whether he accompanied the applicant or remained in the United States, community ties, home ownership, the payment of taxes, gainful employment, church membership, volunteer work, support letters, and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's fraud and/or willful misrepresentation, as outlined above, and periods of unlawful presence and employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The waiver application is approved.