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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



HS

Date: **SEP 05 2012**

Office: NEW YORK

FILE: 

IN RE: Applicant: 

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 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 District Director, New York, New York. 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 Yemen 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 procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130). The applicant contests the inadmissibility finding, but also seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the District Director, December 4, 2009.*

On appeal, counsel for the applicant asserts that USCIS erred by applying the incorrect standard in finding that the applicant had not met his burden of showing undue hardship to a qualifying relative, as well as in misconstruing the facts.

In support of the appeal, counsel for the applicant submit a brief and supporting documentation including, but not limited to: statements of the applicant and his wife; financial information, including bank statements, a tax return, an apartment lease, and utility bills; letters of support; marriage, divorce, and birth certificates; medical records; photographs; and country condition information about Yemen. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 [...].

The district director found the applicant inadmissible because he misrepresented several material facts, including stating that he was employed in Yemen when he was not, to procure a non-immigrant visa (NIV) in 1991, and then failed to disclose these misrepresentations in three

subsequent applications for adjustment of status filed in 1992, 2001, and 2005. “both at the time of filing [and] at the time of [the] three interviews.” *Id.* at 2. The applicant has disputed this inadmissibility, claiming that he never filled out the NIV application containing misrepresentations that a politically-connected friend filed it on his behalf. He contends that he gave his passport to this representative, who completed the application and returned the passport containing a B-1/B-2 visa.¹ Although bearing the burden of establishing admissibility, the applicant has provided no documents supporting this claim. The AAO notes that the applicant does not dispute the facilitator was acting on his behalf, identify this person, or explain what information he provided so that this representative could complete the form. While claiming not to know what information was placed on the NIV application filed in his name, he cannot escape responsibility for an application he authorized and signed. Consequently, the record contains insufficient evidence for reconsideration of the inadmissibility finding.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s U.S. citizen spouse is the only qualifying relative in this case. 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-Moralez*, 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.

¹ The record reflects that the Nonimmigrant Visa Application (OF-156) bears a signature in the space reserved for the applicant and has no information in the space immediately below to be filled out by someone preparing the form on behalf of the applicant. The record reflects that, using this single entry visa, the applicant procured admission to the United States in B-2 status.

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-I-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 wife. The record shows the applicant entered the United States in B-2 visitor status on November 11, 1991, was granted permission to remain until May 10, 1992, and has not departed.

The applicant’s wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be stressed by thoughts of possible separation from the applicant, to whom she has been married for over seven years and with whom she has a six year old son and four year-old daughter. A stay-at-home mother who married at 19, she claims that removal of the applicant, the family’s only wage earner, will make her unable to survive economically and worries that her plan to have more children will be denied. The record contains insufficient documentary evidence to substantiate these claims.

To begin, the applicant's wife states separation from her husband will represent loss of the love and companionship of the person to whom she has devoted herself since marriage. She asserts that the prospect of this loss is painful enough that she would readily follow the applicant overseas, were it not for fear of the dangers this would entail for their children. She reports being devastated at the thought of losing an attentive husband from whom she has never been long apart. The record reflects that she is expecting her third child in December 2012. A 2009 psychological evaluation diagnoses the applicant's spouse with an Adjustment Disorder, Mixed Anxiety, and Depression, based on patient-reported symptoms including insomnia, tension headaches, appetite loss, sadness, and constant worrying. The assessment reflects that the qualifying relative is primarily concerned with being able to care for her children, particularly her elder child, who takes prescription medication for moderate asthma and has had several eye surgeries. There is no indication that the applicant provides his family health insurance or that medical treatment represents a burden to the family.² While the AAO recognizes that separation from her husband will represent hardship, the record fails to establish that the impact on the applicant's wife goes beyond the common or typical consequences of losing a beloved family member.

As for the predicted financial hardship, the only evidence of income on record is a 2005 joint tax return indicating the applicant contributed earnings from employment as a cashier for the grocery business of which he was one-fourth owner.³ Counsel contends that, as the applicant's wife is not a professional, she would not earn enough by working outside the home to offset the childcare costs required to permit her to hold a job. The record contains no indication that she has ever earned income or sought a job, nor does the record address why, if she is unable to work in the family business, the store cannot hire someone to keep the business operating and generating the revenue on which the family depends. There is also no evidence of current household income to substantiate the claim that the applicant is the family breadwinner.

The qualifying relative states that, although her parents are retired, they are unable to help with childcare, but there is no evidence establishing their unavailability. Further, the record reflects they live with one of the applicant's two brothers nearby, but fails to address the ability of any of these family members to assist financially. The record shows that one of these brothers filed an Affidavit of Support (I-864) as a joint sponsor of the applicant, thereby accepting financial responsibility for the applicant for immigration purposes. Without more information regarding the couple's prospects here and abroad, we are unable to assess the impact on the applicant's wife of her husband's departure. The applicant has submitted insufficient evidence of the couple's overall situation to establish that, without his continued presence in the United States, his qualifying relative will experience hardship that is extreme.

² Medical records show that coverage is provided by Medicaid or a not-for-profit managed care company for Medicaid recipients.

³ The record contains a partnership agreement dated February 24, 2006 showing the applicant has a 25% ownership interest in a business located at his residence address, and the psychological evaluation indicates that the business is a grocery store downstairs from his apartment.

The applicant claims that his qualifying relative would suffer extreme hardship in the event that she relocated to Yemen with the applicant. Born in New York, she is a U.S. citizen whom the record shows has extensive ties to the area where she was born, raised, and currently lives. Her entire family lives there, including her children, parents, two adult siblings and their families. Faced with moving to Yemen, the applicant's wife expresses a number of concerns besides leaving her entire extended family. She reports that her father, who emigrated from Yemen, is estranged from his siblings there, and that she visited the country only one time, for 11 months, when she was seven years old (nearly 20 years ago). The AAO notes the qualifying relative expresses health and safety concerns establishing she would suffer extreme hardship by moving to Yemen. Regarding health, she worries about the availability of quality care for her children, as well as the medical necessity that she undergo the same Caesarean delivery for her current pregnancy as for her prior births. The U.S. Department of State (DOS) confirms that modern medical care is limited, cash payment often required, and availability of prescription drugs uncertain. *See Country Specific Information—Yemen*, February 16, 2012.

Regarding personal safety, U.S. government sources establish that the applicant's wife's fear of returning to Yemen is well-founded:

The Department of State warns U.S. citizens of the high security threat level in Yemen due to terrorist activities and civil unrest. The Department urges U.S. citizens not to travel to Yemen. U.S. citizens currently in Yemen should depart.

....

The security threat level in Yemen is extremely high. ... Terrorist organizations continue to be active in Yemen, including al-Qaida in the Arabian Peninsula (AQAP).

....

U.S. citizens remaining in Yemen despite this Travel Warning should limit nonessential travel within the country, make their own contingency emergency plans, enroll their presence in Yemen through the Smart Traveler Enrollment Program (STEP), and provide their current contact information and next-of-kin or emergency contact information.

Travel Warning Yemen, U.S. Department of State (DOS), March 27, 2012.

In addition, the DOS 2011 Human Rights Report states:

The most important human rights problems were government military and security forces' violent reactions to citizens' efforts to peacefully change their government, and the inability of citizens to exercise the full range of their basic human rights. Other major human rights problems included: torture and other cruel, inhuman, or degrading treatment or punishment; arbitrary arrest and detention; denial of fair public trials; lack of judicial independence; limits on freedoms of speech, press, and assembly; extremist threats and violence; restrictions on freedom of movement; lack

of transparency and significant corruption at all levels of government; use of child soldiers by organized forces and tribal and other informal militias; and restrictions on worker rights.

Country Reports on Human Rights Practices for 2011—Yemen, U.S. Department of State.

DOS also warns that “[i]f you are a U.S. citizen woman who also holds Yemeni nationality, and/or are married to a Yemeni or Yemeni-American man, be aware that if you bring your children to Yemen you may not be able to depart.” *Country Specific Information—Yemen*, February 16, 2012.

As documentation supports the qualifying relative’s concerns, the record reflects that the cumulative effect of the her strong ties to the United States and absence of ties elsewhere, her lifelong residence in the United States, and her health and safety concerns, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were she to relocate abroad to continue residing with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.