

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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**



#5

DATE: **SEP 10 2012**

Office: BANGKOK, THAILAND

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, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Cambodia 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 10, 2010.

On appeal, counsel for the applicant asserts that the applicant's spouse will experience extreme hardship related to the applicant's inadmissibility due to the economic and political situation in Cambodia. *Form I-290B*, received October 13, 2010.

The record contains, but is not limited to, the following documentation: a brief from counsel; a statement from the applicant's spouse; country conditions materials on Cambodia, including a September 1, 2010, Travel Warning by the U.S. Department of State and newspaper periodicals discussing the economy and crime in Cambodia; a copy of a casino employee checkout record for the applicant's spouse's former employer; raw medical records from Cambodia pertaining to the applicant's spouse's father; a copy of a death certificate for the applicant's spouse's father; statements from associates and co-workers of the applicant's spouse; tax returns for the applicant's spouse; and photographs of the applicant, her spouse and their family in Cambodia. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act 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 documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant presented false documents in an attempt to obtain a visa to enter the United States. Her misrepresentation, that she was married, was intended to persuade an inspection agent that she had sufficient ties to Cambodia and would return there after the expiration of her temporary visitor's visa. The applicant subsequently admitted her misrepresentation and submitted a Form I-601. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this on appeal.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, 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.

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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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-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.

Counsel asserts the applicant’s spouse will experience extreme physical, financial and medical hardship upon relocation to Cambodia. *Statement in Support of Appeal*, dated November 4, 2010. Counsel asserts the applicant’s spouse suffers from medical conditions, including depression, stress and chest pains, and that he would be unable to obtain adequate treatment in Cambodia. He asserts the applicant’s spouse would be unable to find gainful employment in Cambodia and that, as an American, he would be at risk of crime in Cambodia.

The record contains Cambodian medical records, but these records, some in raw form, pertain to the applicant’s spouse’s father. The record contains a letter from a co-worker of the applicant’s spouse which states that the applicant’s spouse appeared to be absent from work often, and that he would “visit [the applicant’s spouse] when he was sick, which was every month.” *Witness statement*, undated, received August 17, 2010. Beyond this the record contains no evidence that the applicant’s spouse has been diagnosed with any medical condition or requires any heightened standard of medical care. This statement by the applicant’s spouse’s co-worker is not sufficiently probative to establish that the applicant’s spouse has been diagnosed with any medical conditions, or to show what those medical conditions are and what impact they will have on his daily life. Based on this observation, the country conditions materials submitted into the record are not sufficiently related to the applicant’s spouse to establish that he would be unable to receive adequate medical care. As

such, the AAO does not find the record to establish that the applicant's spouse will experience any uncommon medical hardship in Cambodia.

The applicant has submitted country conditions materials on the social, political, economic and security situation in Cambodia. The materials submitted demonstrate that Cambodia has a lower standard of living than the United States, as well as a struggling economy. The Cambodia 2009 *Crime and Safety Report*, published by the U.S. State Department's Overseas Security Advisory Council, states that crime and terrorism threatens the country's security.

The applicant asserts in an August 9, 2010, letter that her spouse suffers from medical conditions and has used up his savings to come and visit her in Cambodia. She explains that he would be unable to find employment in Cambodia and would have trouble adjusting to Cambodia after having resided in the United States for a significant period of time. She further notes that he would have to sever significant family ties in the United States in order to relocate.

As noted above, there is no direct evidence to show that the applicant's spouse suffers from any medical conditions. There are country conditions materials indicating that Cambodia's economy is struggling, but this evidence is not sufficiently related to the applicant's spouse to establish that he would fall within the category of unemployed in Cambodia. The AAO accepts that the political and security situation in Cambodia presents an uncommon hardship on the applicant's spouse.

The record also includes evidence that the applicant's spouse has several children and two grandchildren, and has been a U.S. citizen since 2000. Tax returns submitted for the applicant's spouse indicate that he claimed four dependents in 2007. These are significant family ties and financial obligations. Based on these observations the AAO can determine that the applicant's spouse would experience uncommon hardship upon relocation due to severing his family ties and financial obligations to his other family members.

Based on the evidence of hardships contained in the record the AAO concludes that the applicant's spouse would experience hardship impacts that, when considered in the aggregate, rise to the level of extreme hardship. Although the applicant has established extreme hardship to a qualifying relative upon relocation, the record must also demonstrate hardship to a qualifying relative upon separation.

With regard to hardship upon separation, counsel for the applicant asserts the applicant and her spouse share a deep bond which will result in emotional hardship for the applicant's spouse. *Statement in Support of Appeal*, received November 12, 2010. He further asserts that the applicant's spouse suffers from depression and would not have the finances to continue visiting his spouse in Cambodia.

In a letter dated August 9, 2010, the applicant states that her spouse is 56 years old, and would experience emotional and financial hardship due to her inadmissibility. She explains that her spouse supports two of his grandchildren, has lost his job at a casino due to excessive absences, and has had to use his savings to afford travel to Cambodia to see her.

As discussed above, the record does not contain sufficient evidence to establish that the applicant's spouse has been diagnosed with any medical conditions. While the AAO can acknowledge that the applicant's spouse would prefer the applicant to reside with him in the United States, the record does not contain sufficient evidence to establish that he will experience emotional hardship which rises above what is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

The record does contain tax returns which indicate that the applicant's spouse has claimed two grandchildren as dependents. However, there is insufficient evidence to establish that the applicant's spouse lost his job due to excessive absences, or that he would be unable to obtain another job in order to meet his financial obligations. There is also nothing which establishes what amount of savings, credit or other resources the applicant's spouse has at his disposal to meet his financial obligations. Finally, there is no evidence pertaining to the applicant's spouse's monthly financial obligations, such as bills, cost of living, or travel expenses. Without such evidence the AAO cannot determine that the applicant's spouse is experiencing any significant financial hardship due to the applicant's inadmissibility.

When the hardship factors asserted due to separation are examined in the aggregate, the AAO does not find them to rise to the degree of extreme hardship.

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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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 is dismissed.