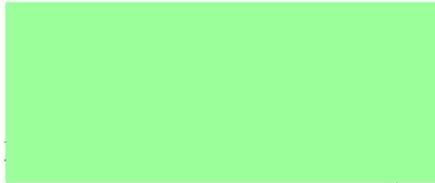




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: APR 10 2013

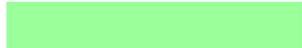
Office: MOSCOW, RUSSIA

FILE:



IN RE:

Applicant:



APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Armenia 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 attempting to procure a U.S. immigration benefit through fraud or the willful misrepresentation of a material fact; and section 212(a)(9)(B)(i)(II) of 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 and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and he is the father of a U.S. citizen child and an Armenian citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(9)(B)(v), in order to reside in the United States with his spouse.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 10, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director abused her discretion by disregarding the submitted medical evidence and finding no extreme hardship to the applicant's wife. *Form I-290B, Notice of Appeal or Motion*, dated February 11, 2012. Additionally, counsel claims that the Field Office Director failed to give the applicant "an opportunity to address all of the factual grounds on which the denial was based." *Id.* Counsel also requests 30 days in order to submit a brief or additional evidence. As of the date of this decision, no additional statements or evidence have been submitted; therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence now before it.

The record includes, but is not limited to, medical documents for the applicant's wife, military service records for the applicant, divorce and marriage documents for the applicant and his wife, household bills, financial documents, and documents pertaining to the applicant's change of nonimmigrant status. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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.
-
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (1) 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 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 [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.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) 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.

....

- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 the present case, the record indicates that on September 29, 1999, the applicant entered the United States on an H-4 nonimmigrant visa with authorization to remain until May 11, 2000. On January 18, 2000, the applicant was granted a change of status to an F-1 nonimmigrant and admitted for duration of status. His Form I-94 Departure Record was annotated as authorizing an extension of stay until January 3, 2003.

On September 29, 2000, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). The applicant claimed that from 1993 until March 1999, he was a member of the army; however, in response to the Field Office Director's request for evidence, the applicant submitted military documents establishing that he was in the military from October 30, 1979 until November 9, 1981. Additionally, in his Application for Immigrant Visa and Alien Registration (Form DS-230), the applicant claims that, during part of the time he claimed on his asylum application that he was in the military, he actually was self-employed as a massage therapist between January 1996 and August 1999, and he attended the [REDACTED] from October 1998 until June 1999.

Based on the applicant's misrepresentation regarding his military service, which was material to his asylum claim, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

In his letter received December 19, 2011, counsel claims that the applicant is not inadmissible for unlawful presence as his last period of stay was for duration of status. The record establishes that the applicant was granted a change of status to an F-1 nonimmigrant visa for duration of status; however, he was then granted an extension of stay until January 3, 2003. On June 11, 2005, the applicant departed the United States. Since the applicant accrued over one year of unlawful presence between January 4, 2003, and June 11, 2005, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure from the United States.

Counsel claims that the applicant's wife cannot join the applicant in Armenia because she would not receive the same medical care that she receives in the United States for her medical condition and her medical care is covered by Social Security benefits. Medical documents in the record establish that the applicant's wife suffered a brain aneurysm on October 29, 2009, and she requires frequent doctor's visits. These statements by counsel constitute the sole claim that the applicant's wife will endure hardship should she relocate. Going on record without supporting 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges that the applicant's wife is a U.S. citizen and that relocation abroad would involve some hardship. However, the applicant's wife is a native of Armenia, and no evidence has been submitted showing that she does not speak Armenian, that she is unfamiliar with the customs and cultures

in Armenia, or that she has no family ties there. Regarding the medical hardship to the applicant's spouse, no documentary evidence was submitted establishing that she cannot receive medical treatment for her medical condition in Armenia or that she has to remain in the United States to receive treatment. Additionally, no evidence has been submitted establishing that she cannot afford medical treatment in Armenia. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Armenia.

Concerning the hardship to the applicant's wife if she remained in the United States, counsel claims that the applicant's wife needs the applicant's assistance. In her letter dated December 13, 2011, [REDACTED] reports that the applicant's wife resides with her 83-year old "disabled mother with multiple co-morbidities who is unable to provide any support." She states the applicant's wife "requires assistance and supervision for essential living purposes" because of her "poor endurance, fatigability and gait disturbances."

The AAO acknowledges that the record establishes that the applicant's wife requires assistance with her daily functioning; however, the record also shows that the applicant's wife resides with her son, and it has not been established that he does not assist his mother. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 to his U.S. citizen spouse as required under sections 212(i) and 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 is dismissed.