



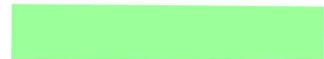
U.S. Citizenship
and Immigration
Services

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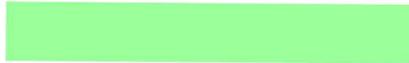


Date: **AUG 01 2013**

Office: ATHENS

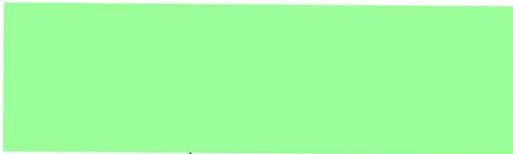


IN RE : Applicant:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. 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 Iran who was found to be inadmissible to the United States under 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 admission to the United States through fraud or misrepresentation. The record reflects that a U.S. consular officer determined that when the applicant applied for and received an immigrant visa as the unmarried son of a U.S. Citizen he was in fact married. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. citizen father.

The field office director found that the applicant failed to establish that his qualifying relative parent would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 2, 2013.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that he has original official documents showing that he was single when he applied and interviewed for a U.S. visa. Subsequent to the filing of Form I-290B counsel for the applicant submitted a statement and documents obtained from Iran. The record contains a letter from a woman asserting she is the applicant's spouse; photos; and a letter from the physician for the applicant's father. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

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....

Prior to addressing whether the applicant qualifies for a waiver the AAO will consider the issues related to the applicant's inadmissibility. The field office director noted that at the applicant's 2007 immigrant visa interview he provided a birth certificate indicating he was not married and signed

forms indicating that he was not married. The field office director noted that a visa had been issued to the applicant, but that it was subsequently cancelled after the consulate received a letter from a woman asserting that she was the applicant's spouse. With the letter were a marriage deed; the woman's original birth certificate indicating she was married and listing the applicant's name, date of birth, and birth certificate number; and wedding photos that included the applicant and his father. The field officer director noted that after notification of his visa being cancelled the applicant informed the consulate that his passport and visa packet had been lost, with a consular officer then charging the applicant with fraud. The field office director noted that the applicant contends it was his girlfriend's family who took his documents and that he provided copies rather than originals of documents to prove he is unmarried. The applicant also submitted photos that served to confirm that his father had taken a picture with him and the woman claiming to be his spouse at their 2004 wedding. Based on this information the field office director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

The applicant contends that at his 2007 consular interview he presented his original birth certificate indicating he was not married, and that upon returning from that interview the family of his girlfriend took his passport, visa packet, and original birth certificate, and that they forcibly detained him for one month, threatening him not to lodge a complaint to authorities. The applicant states that he believes the family arranged a fraudulent birth certificate indicating he was married and then contacted the U.S. Consulate. He states that the girlfriend's family had wanted money for the return of his documents, but that he believes it was a penalty for not including her in his plans to immigrate to the United States. He further states that he did report to authorities the loss of his documents, but because of the girlfriend's family connections to the Revolutionary Guard did not make a complaint against the family. The applicant further contends that he had no reason to commit fraud as immigrating when married would have meant only about an additional 10-month wait.

On appeal counsel asserts that submitted documentation proves the applicant was not married. Counsel submits copies of documents, including a Celibacy Certificate indicating no marriage was registered for the applicant; a statement from the Marriage Registry Office indicating no marriage has been recorded under the number indicated on the documents furnished with the letter from the woman claiming to be the applicant's spouse; a medical statement showing the applicant was hospitalized on the date of marriage as stated by the woman claiming to be his spouse; and the applicant's birth certificate showing his marital status as single.

The AAO concludes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant contends a girlfriend's family stole his documents to submit fraudulent information to the U.S. consulate. Counsel submits copies of documents, some similar to those submitted to the field office director and to those submitted by the woman claiming to be the applicant's spouse. Without more detail and explanation, the AAO is not in the position to reach conclusions concerning the authenticity of these documents. The applicant has not provided a plausible explanation for fraudulent documentation, notably for the marriage deed that indicates he is married. Nor has the applicant or counsel provided explanation for the wedding photos that show the participation of the applicant and his father. The applicant has not submitted evidence that overcomes the finding of the field office director.

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 father 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, 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. *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 a statement the applicant asserts his father's health is precarious. A letter from the father's primary care physician states he has serious medical issues, most serious of which is possible surgery for prostate cancer. The letter states that the father is dependent on others to assist him and that the presence of the applicant would provide physical help and psychological and emotional support. The applicant's father states that the process of bringing his family to the United States had been long and that his wife died as the immigration priority dates of their children were about to become current. He states that although the family is large he depends most on the applicant for assistance and companionship.

On appeal counsel submits no information in support of the extreme hardship to the applicant's father in the event of separation or relocation.

The AAO finds that the applicant has failed to establish that his qualifying parent will suffer extreme hardship as a consequence of being separated from the applicant. The applicant states his father's health is precarious, the father states he depends most upon the applicant and the letter from the father's physician states the applicant would provide emotional support. However, the record contains no detail or supporting evidence explaining the exact nature of the emotional hardships experienced by the qualifying parent due to separation from the applicant or how such emotional hardships are outside the ordinary consequences of separation. Going on record without supporting documentary 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The physician's letter refers to the father's health issues as serious and states that he depends on others to assist him, but there is no evidence that a treatment plan for the father depends on the applicant's physical presence in the United States or an explanation of why other nearby family members are unable to assist.

The applicant, his father, and counsel have made no assertion of financial hardship to the applicant's father and submitted no documentation to establish that without the applicant's physical presence in the United States his father will experience financial hardship.

With respect to the father relocating abroad to reside with the applicant due to his inadmissibility, the AAO notes that this criterion has not been addressed by the applicant.

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 qualifying parent as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.