



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: OFFICE: HARTFORD, CT

AUG 01 2013

IN RE:

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

The applicant is a native and citizen of Macedonia who has resided in the United States since January 22, 1992, when he attempted to enter the United States using a fraudulent I-688 temporary resident card. He 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative.¹ The applicant seeks 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 his U.S. citizen spouse and children.

The Field Office Director concluded the applicant failed to demonstrate his qualifying relative would experience extreme hardship given his inadmissibility, and that he also did not establish he merited a favorable exercise of discretion. *See Decision of Field Office Director*, July 29, 2010. The application was accordingly denied. *Id.*

On appeal, counsel submits a brief, statements from the applicant and his spouse, information on the applicant's prior attorneys, and documentation of unemployment benefits. In the brief, counsel contends the applicant's spouse will experience emotional and financial difficulties upon separation from the applicant. Counsel moreover asserts the spouse would experience severe stress upon relocation to Macedonia because it would entail separation from her family in the United States.

The record includes, but is not limited to, the documents listed above, documentation of immigration proceedings, other applications and petitions, evidence of birth, marriage, divorce, residence and citizenship, letters from family members and employers, copies of U.S. income tax returns, and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.²

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.

¹ The applicant is also the beneficiary of an approved I-130 Petition filed by his U.S. citizen child.

² The AAO notes there is an un-adjudicated Form I-290B, Notice of Appeal or Motion, filed on June 23, 2009, related to the Field Office Director's May 23, 2009 decision on a previous I-601 application. This Form I-290B was never forwarded to the AAO for adjudication. This present decision will constitute a decision on both appeals.

Section 212(i) of the Act provides:

- (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 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.

In the present case, the record reflects that on January 22, 1992 the applicant presented a fraudulent temporary resident card to immigration officials to procure admission into the United States. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 v. I.N.S.*, 138 F.3d 1292 (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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s spouse claims she will experience financial and emotional hardship without the applicant present. She explains she lost her job in July 2010, and because her employer also provided her with housing, she lost that as well. The spouse states she and the applicant still do not have a place to live or a job. She adds she had to apply for unemployment benefits because she cannot find employment, she has difficulty meeting her financial obligations, and the applicant no longer has work authorization. Documentation from the Connecticut Department of Labor is

submitted in support. The spouse moreover asserts she has been married to the applicant for sixteen years, and she needs him for emotional and moral support.

Counsel contends the applicant's spouse will experience severe stress upon relocation to Macedonia because she and the applicant would be separated from their children, grandchildren, and other relatives.

The applicant has shown that his spouse is currently experiencing financial difficulties. The applicant has submitted documentation from the Connecticut Department of Labor indicating his spouse was unemployed as of July 2010, and that she would receive unemployment benefits until July 2011. However, there is no evidence of record indicating the applicant would be able to assist her financially if he were no longer inadmissible.³ The applicant has also not shown that, as of 2010, the spouse's children or other family members are unable to provide her with financial assistance. Furthermore, the applicant submitted no evidence on the spouse's expenses, incurred after her changed housing situation, to demonstrate her inability to meet those financial obligations. Without documentation on the applicant's financial contributions and the spouse's expenses, the AAO is unable to evaluate the financial impact of separation on the applicant's spouse.

The record reflects the applicant and his spouse have been married since 1994, and that separation would cause the spouse emotional hardship. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Macedonia without his spouse.

The record further reflects that relocation to Macedonia would entail separation from family members in the United States. However, the applicant has not submitted documentation demonstrating how such separation would cause the spouse's difficulties to rise above those normally experienced by relatives of inadmissible aliens. As such, we do not find there is sufficient evidence of record to show that her difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Macedonia.

³ Although the applicant was released from immigration detention in December 2009 and he was authorized to work until May 2010, he has submitted no evidence indicating he obtained employment and contributed financially during this time.

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 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.