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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: AUG 05 2013

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application and 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 Cambodia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and does not warrant a favorable exercise of discretion. The field office director denied the application accordingly.

On appeal, filed on July 7, 2010 and received by the AAO on March 13, 2013, the applicant contends the field office director failed to give proper weight to the extreme hardship his wife will suffer and submits a psychological evaluation.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED], indicating they were married on May 9, 2009; a declaration from Ms. [REDACTED] a psychological evaluation; a letter from Ms. [REDACTED] supervisor; letters of support; copies of tax returns, bills, and other financial documents; photographs of the applicant and his wife; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that during his adjustment of status interview, the applicant claimed he was married when, in fact, he was already divorced from his ex-wife. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, Ms. [REDACTED] states that she will suffer from financial and emotional problems if her husband returned to Cambodia. She states that if her husband's waiver application is denied, she would move to Cambodia with him because she has no family or close relatives in California who can support her if needed. According to Ms. [REDACTED] she and her husband share their monthly expenses of \$3,160 and they would be unable to afford medical insurance in Cambodia. In addition, she contends they would be unable to find comparable employment in Cambodia. Furthermore, Ms. [REDACTED] states they do not have a support group in Cambodia as the applicant's sixty-seven year old mother cannot walk due to an accident and Ms. [REDACTED] two sisters do not work.

After a careful review of the record, the AAO finds that if the applicant's wife, Ms. [REDACTED] returned to Cambodia, where she was born, to avoid the hardship of separation, she would experience extreme hardship. The record shows that Ms. [REDACTED] became a naturalized U.S. citizen in 1983 and has lived almost her entire adult life in the United States. In addition, the AAO acknowledges that Ms. [REDACTED] has worked for the Department of Veterans Affairs since 1998. Relocating to Cambodia would mean leaving her employment and all of its benefits. Furthermore, according to the psychological evaluation, relocating to Cambodia would be devastating to Ms. [REDACTED] who needs psychotherapy to help her cope with the chronic post-traumatic stress disorder she has had after learning in 1982 that her parents, brother, and sisters were killed in Cambodia, and after her second husband died suddenly from an aneurysm. According to an article quoted by the psychologist, there is very little mental health treatment in Cambodia. Considering the unique factors of this case cumulatively, the AAO finds that the hardship Ms. [REDACTED] would experience if she returned to Cambodia to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, Ms. [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the couple's situation, if Ms. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO recognizes that Ms. [REDACTED] has been diagnosed with chronic post-traumatic stress disorder as well as Major Depressive Disorder, according to the psychologist, Ms. [REDACTED] has suffered from these mental

health issues for a very long time, prior to meeting the applicant. There is nothing in the record that addresses how the applicant has helped Ms. [REDACTED] with her mental health issues. Regarding financial hardship, Ms. [REDACTED] submitted an Affidavit of Support Under Section 213A of the Act (Form I-864), affirming she would financially support the applicant based on their combined income of \$76,428, of which Ms. [REDACTED] earned \$52,088. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated July 10, 2009. Although the record contains bills for medical care, including a claim for over \$67,000, neither the applicant nor his wife provide any explanation for the medical bills submitted on appeal and neither claims they have any medical problems. In addition, there is no evidence in the record that they are in arrears with paying any of their bills and there is no documentation to corroborate the claim made by the psychologist that Ms. [REDACTED] lost her house to a short sale in February 2009 after falling behind on her mortgage payments. Although the AAO does not doubt that Ms. [REDACTED] will experience some financial hardship, there is insufficient information in the record to evaluate the extent of her hardship. In sum, the record does not show that Ms. [REDACTED] hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if she remains in the United States, the hardship the applicant's wife will experience amounts to 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 applicant's wife, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.