



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **AUG 08 2013** OFFICE: HONOLULU FILE: [Redacted]

IN RE: [Redacted]

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:  
[Redacted]

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,

*for*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Honolulu, Hawaii 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 Japan 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 having procured entry to the United States by fraud or willful misrepresentation. The record reflects that the applicant entered the United States pursuant to the Visa Waiver Program on December 17, 2008 as an intending immigrant rather than a visitor for pleasure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated January 6, 2012.

On appeal, counsel states that the applicant has submitted sufficient evidence demonstrating that the applicant's spouse would suffer extreme emotional and financial hardship if he were separated from the applicant. Counsel also asserts that the applicant's spouse would leave behind family and business ties in the United States and face environmental dangers if he relocated to Japan.

In support of the waiver application and appeal, the applicant submitted letters, letters from the applicant's spouse, family photographs, financial documentation, identity documents, letters of support, legal documentation, and medical documentation concerning the applicant. 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:

- (1) 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 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 (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...

The applicant entered the United States as a tourist on August 30, 2008 and married her spouse on September 2, 2008. The applicant then entered the United States on December 17, 2008 as a tourist, indicating that she was entering to attend the wedding of a Japanese national. The applicant subsequently remained in the United States, residing with her U.S. citizen spouse in Hawaii since that date.

The applicant was questioned regarding her December 17, 2008 entry to the United States on February 11, 2011. In a sworn statement, the applicant stated that she did not attend any weddings in 2008 or 2009 and that she did not remember why she stated otherwise to an immigration officer. The applicant asserted that she entered the United States on December 17, 2008 in order to see her husband. In an affidavit filed in conjunction with her waiver application, signed April 4, 2011, the applicant again stated that she does not remember what she said to the immigration officer in December 2008, but that she entered the United States to visit her spouse, not attend a wedding. On February 2, 2012, the applicant signed a contradictory affidavit stating that she now remembers that she was supposed to attend a wedding party in December 2008, but it was cancelled. The applicant contends that she intended to return to Japan after her December 17, 2008 entry, but remained in the United States only because her spouse opened a spa in Hawaii.

It is noted that the applicant's spouse had previously opened two spas and a clinic in Hawaii, in 2002-2004, and retained only his clinic due to the economic downturn. It is also noted that the applicant's spouse signed a lease for his newest spa in November 2008, well before the applicant's last entry into the United States. Further, the applicant's February 2012 affidavit, submitted over three years after her date of entry to the United States, following prior written and oral statements containing contradictory information, is insufficient to demonstrate that the applicant did not procure admission to the United States through misrepresentation. The applicant has failed to satisfy her burden of proof and demonstrate that she was not an intending immigrant at the time of entry in December 17, 2008, and not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant or other relatives are not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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 the present case, the record reflects that the applicant is a 36-year-old native of Japan. The applicant's spouse is a 45-year-old native of Yugoslavia and citizen of the United States. The applicant is currently residing with her spouse in Honolulu, Hawaii.

Counsel for the applicant asserts that the applicant's spouse would be unable to financially support himself in the United States and simultaneously provide for the applicant and their son to return to Japan. Counsel contends that, alternatively, the applicant's spouse would have to place their child in childcare in the United States, which would also create a financial hardship. The record does not contain any documentation indicating the applicant's spouse's income in the United States. It is noted that the applicant states that she could probably live with her family in Japan for some time, which would decrease her financial obligations in Japan. 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)).

Counsel for the applicant asserts that the applicant's spouse would experience extreme emotional hardship upon separation from the applicant and their child. Counsel asserts that the applicant's spouse suffered severe depression prior to his relationship with the applicant and thought his life had turned around upon their meeting. It is noted that there is no supporting documentation in the record concerning the applicant's spouse's psychological condition, past or present. The applicant's spouse asserts that he has a nice life with the applicant and would not want to lose her. It is acknowledged that separation from a spouse nearly always creates hardship for both parties and the record establishes that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that he cannot relocate to Japan to reside with the applicant because he would leave behind family and business ties in the United States for a country with no financial prospects. The applicant's spouse contends that he would face financial ruin if he left the United States because he incurred approximately \$100,000 debt in starting his business, signed a lease until 2013, and would be unable to pay his loans and debt. The record contains a signed lease, indicating an end date of October 31, 2013, and phone bills for the business. The record does not contain any other financial documentation concerning the applicant's spouse's income or financial responsibilities in the United States.

The applicant asserted that her family could probably stay with family members in Japan for some time, indicating that she and her family would receive assistance upon relocation. Further, there is no evidence that the applicant's spouse would be unable to receive licensure in his trade and seek employment in Japan; the applicant's spouse indicates that he does speak some Japanese. The applicant submitted an article indicating that [REDACTED] is planning to cut flights as evidence

that she would be unable to find employment as a flight attendant in Japan. It is noted that the applicant was a flight attendant with a different airline, All [REDACTED], from February 1998 until her last entry into the United States in December 2008. The record indicates that the applicant possesses over a decade of experience in the airline industry, including working as a flight attendant, chief purser, and instructor. It is also noted that there is no indication that the applicant would be unable to seek other employment in Japan, as necessary.

The applicant's spouse asserts that he would leave behind a son in the United States, with whom he reconnected in March 2009. The applicant's spouse contends that his son needs him for guidance in the United States and that he would be unable to pay child support if he relocated to Japan. It is noted that the applicant's spouse's son was born on January 12, 1994 so that he is currently 19 years of age. It is not clear that the applicant's spouse is still required to pay child support for his son. The applicant's spouse's son submitted a letter stating that he currently sees the applicant's spouse every week or so. There is no indication that the applicant's spouse's son would be unable to visit the applicant's spouse, and vice versa, and continue their relationship through other means of communication.

Counsel for the applicant asserts that Japan suffers from unhealthy environmental conditions after a March 2011 earthquake and tsunami damaged reactors at the Fukushima-Daiichi nuclear plant, and that it would be unconscionable to subject the applicant's spouse and their son to these conditions. The Department of State has not issued any travel warnings concerning travel to Japan for U.S. citizens. Further, the applicant's parents reside in Kagoshima, a prefecture on an island located over 700 miles from Fukushima. There is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon relocation to Japan.

Although the depth of concern and anxiety over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 her 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.