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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



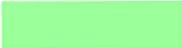
U.S. Citizenship
and Immigration
Services



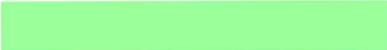
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DATE:

Office: NEBRASKA SERVICE CENTER

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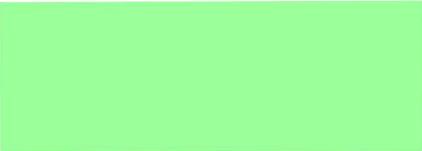
IN RE:

Applicant: 

APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under sections 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 a citizen of Panama 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to come to the United States as the beneficiary of the approved Petition for Alien Fiancé(e) (Form I-129F) filed by her fiancé.

The director found that the applicant failed to establish that the bar to her admission would result in extreme hardship to her U.S. citizen fiancé and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, June 6, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant had not established extreme hardship to her qualifying relative if she is unable to immigrate to the United States. In support of the appeal, the applicant submits a brief. The record also includes: a hardship statement, financial documentation, laboratory results and prescription information, a divorce decree, photographs, and copies of a passport and visa. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

The record reflects the applicant misrepresented her employment status to a consular officer at her nonimmigrant visa interview by presenting a fraudulent job letter, was issued a B1/B2 visa on September 10, 2002, and attempted to procure admission on September 11, 2002 in order to work in the United States. Later the same day, she was ordered removed under section 235(b)(1) of the Act and returned to Panama. She thus requires a waiver of inadmissibility in order to receive a fiancée visa.

A waiver of inadmissibility under section 212(i)(1) 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, fiancé, or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen fiancé is the only qualifying relative claimed 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-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 provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that her fiancé would suffer extreme hardship by relocating to his native country to join her, counsel asserts the qualifying relative would be economically disadvantaged by doing so. The only support for counsel's claim is the fiancé's statement that he would be unable to find a job in Panama. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no indication the qualifying relative has investigated the job opportunities available to him, nor anything showing that moving overseas would entail more than the common or typical consequences of removal or inadmissibility. The AAO notes that, while the applicant's fiancé has a child support obligation and several loans, there is too little information on record for us to conclude he would be unable to pay these debts. The only evidence of his income is in the 2011 divorce decree itself, as no documentation of his employment or income is provided. The record reflects that he is currently receiving a military pension of indeterminate amount, and reported to the court nearly three years ago having earned income of almost \$5,500 monthly. See *Final Divorce Decree*, March 11, 2011. When visiting Panama, the applicant indicates being able to stay with his mother.

Counsel also asserts that the qualifying relative has asthma and other ailments requiring him not to live in a tropical climate. In support, counsel submits copies of medical records consisting of laboratory results and prescription information. The evidence on the record is insufficient to establish that the petitioner's condition precludes him from relocating. The laboratory results were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's fiancé. There is no indication that his current treatment is unavailable in Panama. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition, the AAO is not in the position to reach conclusions concerning the severity of a medical condition as it relates to relocation. We note that the applicant's fiancé grew up in Panama and returned there for a U.S. military posting in the 1990s.

Regarding the claim of hardship due to separation, the applicant provides no evidence regarding the nature of her relationship with her fiancé, and the only documentation regarding their engagement is the Form I-129F approved July 2012. The qualifying relative claims they have known each other

since 1992 and, the record reflects that he visited Panama in 2011, while the applicant has never visited the United States. His claim that her absence imposes a negative psychological impact on him is unsupported by the record, and there is no claim that the applicant's inability to immigrate represents any economic hardship. Financial documentation provided by counsel fails to address any adverse impact of the applicant's absence, and the AAO notes that she has never been physically present here. There is thus no indication that the applicant's failure to immigrate will cause her qualifying relative to be unable to meet his financial obligations. Counsel's contention that the applicant's fiancé would experience hardship beyond the common results of separation is unsupported by the record. There is no indication he lacks the resources to visit the applicant overseas to ease the pain of separation, and the record indicates that he has done so at least once since 2011.

For all these reasons, the cumulative effect of the hardships the applicant's fiancé will experience due to the applicant's inadmissibility does not rise to the level of extreme. Based on the evidence provided, the applicant has not established that her fiancé would suffer hardship beyond those problems normally associated with family separation if he remained in the United States without her.

The documentation on record, when considered in its totality, reflects the applicant has not established that her fiancé will suffer extreme hardship if she is unable to live in the United States. His situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship as required under the Act.

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.