



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 16 2013

OFFICE: NEWARK

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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to 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 an immigration benefit by fraud or willful misrepresentation. The applicant was also found to be inadmissible pursuant to 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

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 October 25, 2012.

On appeal, counsel for the applicant asserts that the applicant's spouse and children would suffer extreme emotional hardship upon separation from the applicant and the applicant's spouse would be concerned for her safety in [REDACTED]. Counsel further asserts that the applicant's spouse relies upon the applicant to care for their family. Counsel contends that the applicant's spouse cannot relocate to [REDACTED] because of his extensive ties to the United States.

In support of the waiver application and appeal, the applicant submitted identity documents, financial documentation, letters of support, background country conditions concerning [REDACTED] and a letter from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

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extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The record reflects that the applicant entered the United States with the passport and visa of an individual other than herself on December 27, 2001. Specifically, the applicant's passport and visa were in the name of a [REDACTED] with a date of birth of November 24, 1986. The applicant again used this alias to procure a visa and entry to the United States on September 17, 2005. The applicant also asserts that, on three occasions, she obtained false entry stamps to [REDACTED] and omitted a valid entry stamp on her passport. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring an immigration benefit through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of [REDACTED] who entered the United States with a B1/B2 visa on December 27, 2001, with authorization to remain in the United States until June 22, 2002. The applicant asserts that she departed the United States on May 29, 2005. The applicant attained the age of 18 on April 16, 2003. Accordingly, the applicant accrued unlawful presence from that date until her departure from the United States. The record reflects that applicant accrued over one year of unlawful presence in the United States and the applicant does not

dispute this ground of inadmissibility on appeal. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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 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 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.

The record reflects that the applicant is a 28-year-old native and citizen of [REDACTED]. The applicant’s spouse is a 43 year-old native of [REDACTED] and citizen of the United States. The applicant is currently residing in [REDACTED] with her spouse and children.

The applicant’s spouse asserts he would be concerned about the applicant’s safety upon her return to [REDACTED] and that it would devastate his aging mother if the applicant departed the United States. Counsel for the applicant states that the applicant’s spouse’s aging, sick mother receives care from the applicant. The applicant’s spouse’s mother asserts that her health is poor and the applicant takes her to the doctor when necessary. It is noted that the record does not contain any medical documentation concerning the applicant’s spouse’s mother.

The applicant’s spouse asserts that it would devastate both him and his children if they were separated from the applicant. The record contains an updated psychological report stating that the applicant’s spouse’s work schedule is demanding so that the applicant runs the household and raises the children. It is noted that there is no indication that the applicant’s spouse would be unable to arrange for childcare while he is at work. The psychological report states that the applicant’s children are extremely attached to the applicant, so that it is highly likely they would develop separation anxiety disorder upon separation. It is noted that the applicant’s children are not qualifying relatives in the context of this application, so that any hardship they would suffer will be considered only insofar as it affects the applicant’s spouse. The psychological report also states that the applicant’s spouse would be presented with stressors upon separation from the applicant, which could result in a mood or anxiety disorder or major depressive disorder.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience 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 hardship beyond the common results of removal or inadmissibility upon separation from the applicant. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

In a letter dated December 14, 2007, the applicant's spouse asserted that he cannot relocate to [REDACTED], stating that he had been living in the United States for 20 years at the time. Counsel for the applicant asserts that the applicant's spouse currently owns three pizza restaurants in [REDACTED] employing between 25 and 30 workers. The applicant's spouse contends that, in addition to his businesses, he also owns his own home in the United States. The record contains supporting financial documentation concerning the applicant's spouse's ownership of his home and businesses in the United States.

The applicant's spouse asserts that he has no family ties or home left in [REDACTED]. Counsel for the applicant asserts that the applicant's spouse's mother, five brothers, and four sisters all reside in the United States. The record contains letters of support from the applicant's spouse's mother, two of his brothers, and his pastor in the United States. The applicant's spouse asserts that there would be nobody left to care for his mother if he joined the applicant in [REDACTED]. As noted, the record does not contain medical documentation concerning the applicant's spouse's mother's health.

Counsel for the applicant contends that the applicant's spouse has spent his adult life establishing himself as a businessman and would be forced to abandon those businesses upon relocation to [REDACTED]. The psychological report concerning the applicant's spouse states that the applicant's spouse has been working in the pizza restaurant industry for over 20 years and works from 9:30 am in the morning until between 11:00 pm and 12:00 am at night, five days a week. The applicant's spouse also asserts that he would face a lower standard of living in Guatemala in terms of his health and safety. Based on her spouse's length of residence and ties to the United States, lack of ties in Guatemala, and the difficulty of adjusting to conditions there after over twenty-five years in the United States, the applicant has established extreme hardship to her spouse if he were to relocate to Guatemala with her.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Guatemala. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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).

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 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 qualifying relative in this case.

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) and section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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.