



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 06 2013

Office: CHICAGO

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


f- Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Israel and citizen of Jordan who 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 admission to the United States through fraud or misrepresentation. On August 29, 2005, the applicant applied for a non-immigrant visa to the United States at the U.S. Consulate in Jerusalem, Israel. At the time of his application, the applicant claimed that he was married, although the applicant now claims he was not married when he made the application. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. Citizen spouse.

The acting field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated October 3, 2011.

The record contains the following documentation: attorney's brief in support of Form I-290B; Notice of Appeal or Motion; attorney's brief in support of Form I-601, Application for Waiver of Ground of Excludability; a declaration from the applicant in support of Form I-290B; a declaration from the applicant in support of Form I-601; a declaration from the applicant's spouse in support of Form I-290B; a declaration from the applicant's spouse in support of Form I-601; medical documentation for the applicant's spouse; medical documentation for the applicant's three step-children; documentation related to the medical conditions of the applicant's spouse and his three step-children; country conditions information on the West Bank of Israel; a copy of the divorce certificate of the applicant's spouse and her first husband; financial documentation; and letters of reference. 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.

On appeal, counsel asserts that USCIS erred in determining that the applicant required a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act as the applicant did not misrepresent a material fact in his application for a non-immigrant visa by representing that he was married. Counsel further asserts in her brief that the applicant's misrepresentation on his visa application that he was married was not material to his application, as it did not cut off any line of inquiry relevant to his eligibility for the visa.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

Section 101(a)(15)(B) of the Act defines an alien eligible for a non-immigrant B1/B2 visa as "an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure."

The Foreign Affairs Manual, at 9 FAM 41.31 N3.4, further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

By claiming he was married in his application for a B-1/B-2 visa, the applicant represented that he had a close family tie residing in the West Bank of Israel. By omitting the fact that he was single, he cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa. Furthermore, the record indicates that the applicant was aware that misrepresenting his marital status on his non-immigrant visa application would help in the approval that application. On the Form I-601, the applicant states that the travel agency marked that he was married, and he was told that it was the only way to get a visa. In the applicant's declarations, he said that he did state that he was married, but that he was told that the only way that he would get his visa was if he told the U.S. consular officials that he was married. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to his nonimmigrant visa application in 2005.¹

¹ The AAO finds the applicant falsely claimed that he was married at the time of his non-immigrant visa application, which is a misrepresentation of a material fact. Based upon that finding, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. In the decision dated October 3, 2011, the acting field office director raised other discrepancies in the applicant's testimony, and in documentation submitted by the applicant. In the brief in support of the I-290B, Notice of Appeal or Motion, counsel refutes the discrepancies raised by the acting district director, and in

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove inadmissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden.

Section 212(i) of the Act provides in pertinent part:

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 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 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

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. The applicant's U.S. citizen wife is the only qualifying relative in this case. The record contains references to hardship the applicant's step-children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as factors 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(a)(9)(B)(v) of the Act, and hardships to the applicant's step-children will not be separately considered, except as they may affect the applicant's spouse. 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

some instances, provides documentary evidence to support counsel's assertions that no discrepancy exists. However, as the applicant is inadmissible for misrepresentation of a material fact in his application for a non-immigrant visa, the AAO deems it unnecessary to address each of the discrepancies raised by the acting district director and contested by the applicant's attorney.

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, 1293 (9th Cir. 1993), (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.

Counsel indicates that the applicant's spouse would suffer financial hardship if the applicant's waiver application is not approved. Counsel states that without the applicant, the applicant's spouse would be unable to provide for her three children, herself, and her ailing mother. The applicant's spouse states that the applicant is working toward getting a job so that the family may become more

financially stable, and that it is hard to get by on just her salary. The financial documentation included in the record includes copies of the 2003 federal income tax return for the applicant's spouse indicating an adjusted gross income of \$18,759, a copy of the 2005 federal income tax return for the applicant's spouse indicating an adjusted gross income of \$18,776, and a copy of the 2007 federal income tax return for the applicant and his spouse indicating an adjusted gross income of \$25,329. The record also includes copies of bank statements of the applicant's spouse, copies of 2006 automobile insurance bills for the applicant and his spouse, copies of 2006 homeowners insurance for the applicant's spouse, and a copy of a utility bill from 2008. The applicant's spouse states that she owns her home, and indicates that there is still a mortgage on the home, but there is no record of the amount of the mortgage payments incurred by the applicant's spouse. While the record does include financial documentation, the evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

The applicant's spouse also states that she will have financial difficulty supporting her three children, the applicant's step-children. In the case of the applicant's two older step-children, the record includes a copy of the divorce decree for the applicant's spouse from her first husband, indicating that her ex-husband is required to pay child support of \$350 per month until the children are emancipated or reach the age of 18, whichever comes first. The applicant's oldest step-child was born in 1996, indicating that she will receive child support until 2014, and the second step-child was born in 1997, indicating that he will receive child support until 2015. The record includes a statement from the ex-husband of the applicant's spouse and the ex-husband's current wife, and there is no indication that the ex-husband has failed to provide support for his two children.

Counsel states that the applicant's spouse will suffer medical hardship if the applicant's waiver is not approved. Documentation in the file indicates that the applicant's spouse has suffered from various medical conditions including kidney stones; a mass on her breast that needs to be monitored with a mammogram every six months; irritable bowel syndrome; asthma; leukocytosis; diverticulosis; thoracic degenerative disease; and spinal arthritis. The applicant's spouse states that these conditions require regular medical treatment and that it would be a hardship to be separated from the applicant as she needs the applicant to take care of her children while receiving medical treatment, and that without the applicant it would be difficult to maintain her health. The AAO notes that the record contains medical records with notes from visits to her physician's office, but does not contain a detailed explanation from her treating physician in plain language concerning the diagnosis of any current medical condition, the prognosis for recovery, or any treatment or family assistance needed. Without such an explanation from her physician, the AAO is not in the position to reach conclusions concerning the severity of the applicant's spouse's medical conditions or the need for assistance from the applicant.

The applicant's spouse also states that all three of her children have Attention Deficit Hyperactivity Disorder, and that the applicant helps support her to take care of the children. As noted above, under section 212(i) of the Act, children are not deemed to be qualifying relatives, but USCIS does consider that a child's hardship can be a factor in determining whether a qualifying relative experiences extreme hardship. The record includes medical documentation for the applicant's three-step-children as evidence that they are suffering from Attention Deficit Hyperactivity Disorder. The

applicant's spouse also states that her youngest child suffers from bipolar disorder in addition to Attention Deficit Hyperactivity Disorder. The applicant's spouse states that she was not married to the father of this child, that she has lost contact with the father of this child, and that the father of the child provides no support to the applicant's spouse or the child. The applicant's spouse states that she relies upon the applicant to help her care for this child and provide her with emotional support.

The record indicates that the medical conditions of the three children, in particular that of her youngest son, cause hardship to the applicant's spouse. However, as noted above, the ex-husband of the applicant's spouse is still in contact with the elder two step-children of the applicant, and thus has the ability to contribute to their support. The applicant's spouse further states that she provides support to her mother. The record indicates that the mother of the applicant's spouse resides in a different state than the applicant and his spouse, and that the applicant's spouse has a brother who helps to provide support for her mother.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure some hardship as a result of separation from the applicant, especially in regard to her medical conditions and the care for her youngest child. However, the record does not contain sufficient evidence concerning her medical condition, financial situation, or any potential emotional hardship to establish that her situation if she remains in the United States would amount to hardship beyond the common results of removal or inadmissibility. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In regard to the applicant's spouse relocating to the West Bank of Israel to reside with the applicant, counsel states that it would be a hardship for the applicant's spouse and her children to reside in the West Bank of Israel as they do not speak the language, and that it would be difficult to obtain proper medical treatment for the applicant's spouse and her children. In support of the contention that proper medical care would not be available, the applicant provides documentation in the form of reports from the World Health Organization, and news articles. In addition, counsel notes that the applicant's spouse would face hardship due to her religion in the West Bank, as a Christian married to a Muslim. In addition, the record indicates that the father of the applicant's two elder step-children maintains visitation rights for the children, and it would not be possible for these two children to accompany the applicant's spouse were she to relocate to the West Bank.

The record establishes that if the waiver application were denied, the hardships that the applicant's spouse would face were she to relocate to the West Bank of Israel, when considered in the aggregate, rise to the level of extreme.

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.*

(b)(6)

Page 8

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 qualifying relative in this case.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.