



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 08 2013 OFFICE: BALTIMORE, MARYLAND

FILE: [REDACTED]

IN RE: Applicant: [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:

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of El Salvador 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 having sought to procure admission to the United States through willful misrepresentation. The applicant is the daughter of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, contests the finding of inadmissibility, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her daughter in the United States.

The District Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated June 23, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred as a matter of law by: applying a *per se* rule and concluding the applicant's verbal misrepresentation of her identity upon seeking admission deprives her of any further consideration of her waiver application; failing to properly analyze materiality and to address counsel's attempts to distinguish the relevant facts in *Matter of Zamora*, 17 I&N Dec. 395 (BIA 1980), *Matter of Aurelio*, 19 I&N Dec. 458 (BIA 1987), and *Senica v. I.N.S.*, 16 F.3d 1013 (9<sup>th</sup> Cir. 1994) from the applicant's circumstances in that the fraudulent intent of a "coyote" cannot be imputed to a minor absent the presence or direct urging of a parent; and failing to properly apply the relevant facts to the appropriate legal standard as the evidence in the record is sufficient to establish the applicant's father would suffer extreme hardship because of her inadmissibility. *See Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated July 19, 2011.

The record includes, but is not limited to: briefs, motions, and correspondence from current and previous counsel; letters of support; identity, employment, and financial documents; photographs; and documents on conditions in El Salvador. 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) 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.

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* “is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to the advantage of the deceiver.” *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are “material” is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now the USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. 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 proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The record reflects that the District Director found the applicant inadmissible for failing to disclose her true identity upon apprehension by U.S. immigration officials on November 12, 1992. The record also reflects that at the time of the applicant’s apprehension, the applicant was 16-years-old and traveling with a “coyote” and other individuals, none of whom were the applicant’s parents or legal guardians. On appeal, counsel contends the applicant was aware she was lying about her identity as she was instructed to do by the “coyote”, but her misrepresentation is void *ab initio* as a misrepresentation cannot be imputed to a minor child without the fraudulent intent of the child’s parent. The AAO finds counsel’s contention unpersuasive as the doctrine of imputation is inapplicable to the applicant’s particular circumstances. *See Singh v. Gonzales*, 451 F.3d 400 (6<sup>th</sup> Cir. 2006)(citing *Senica v. I.N.S.*, *Matter of Zamora*, and *Matter of Aurelio*, *supra*.) The applicant made a willful misrepresentation in order to gain admission to the United States. Thus, the applicant, and nobody acting on her behalf, misrepresented her identity to gain a benefit under the Act for which she was not eligible. The AAO finds the applicant’s misrepresentation is material as she would have been excludable on the true facts; i.e., she did not have the identity as

indicated upon her encounter with the inspecting officers.<sup>1</sup> Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now Secretary of Homeland Security (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant and her daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father is the only demonstrated qualifying relative in this case. 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 BIA 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 BIA 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 BIA 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

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<sup>1</sup> The AAO notes the District Director found the applicant's misrepresentation to be material as the Immigration Judge issued an order of deportation on March 9, 1993. The AAO is unaware of a *per se* determination that a misrepresentation is material upon the issuance of a deportation order.

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 *Id.* at 568; *In re 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 BIA 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 (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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 (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 contends the applicant’s father would suffer extreme emotional and financial hardship in the applicant’s absence as he would have the added responsibility to care for his granddaughter, and he would have to raise his granddaughter in “community housing” as he does not live by himself. The applicant further discusses: she is her daughter’s only parent, and thereby, provides her daughter with her financial, moral, and tangible needs; her daughter would have to relocate to another state to be cared for by the applicant’s father; her daughter would be at risk of rape and molestation as the applicant’s father rents one room in a two-bedroom apartment in which five other people live; her daughter may end-up “on the streets” and turn to drugs and alcohol as she would be unable to tolerate the applicant’s father’s living conditions; her daughter would be in jeopardy of not going to college, and her father does not have the financial means to pay for her daughter’s college; and her daughter would be alone when her father travels to El Salvador to visit his other family members. The applicant’s father also discusses: the relationship he and his son in

the United States have with the applicant, indicating he and the applicant talk on the telephone every other day, visit each other regularly, and do various activities with one another; it would be too much of a burden to take-on the care and responsibility of his teenage granddaughter at his elderly age, and he fears that his health would suffer; his granddaughter would be unable to live with her uncle as he already has two children and a family to provide for financially; his employment in the construction industry and the unpredictability of available work due to weather conditions and the lack of employment contracts; the financial support he sends to his children and their mother in El Salvador; he cannot afford a residence on his own, and his granddaughter would have to live with him and five other individuals, mostly men; and he has limited English skills to assist his granddaughter with her academic studies. The applicant's father further discusses the depression he fears the applicant would endure upon separation and that she has made her life in the United States and does not have anything in El Salvador.

Although the applicant's father may experience hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes the record does not include any evidence of the current mental health of the applicant, her father, or her daughter, demonstrating their inability to function in the applicant's absence. Absent an explanation in plain language from the treating mental health professional of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Additionally, the record is sufficient to establish the applicant's father provides remittances to his family in El Salvador. However, the record does not contain sufficient evidence to establish his inability to meet his financial obligations in the applicant's absence. Moreover, he and the applicant live separate and apart; in New York and Maryland, respectively. Accordingly, separation does not constitute a change in the applicant's and her father's circumstances, and it does not appear the applicant has ever actually helped her father with maintaining his household in the United States or his family in El Salvador.

The AAO notes the concerns regarding the applicant's father's hardships, but finds even when this hardship is considered in the aggregate, the record fails to establish the applicant's father would suffer extreme hardship as a result of separation from the applicant.

The AAO further notes counsel does not address any hardship the applicant's father would experience upon relocation to El Salvador to be with the applicant. However, the applicant's father indicates he would suffer extreme hardship as it would be difficult for him to obtain a job that pays enough for him to support his younger children in El Salvador, and his granddaughter would be forced to make the choice of relocation as well.

The record is sufficient to establish the applicant's father would suffer hardship if he were to relocate to El Salvador. Although he maintains family ties in El Salvador, he has maintained his lawful permanent resident status in the United States since December 1, 1990. He maintains a close relationship with a son in the United States and economic ties through his employment in the

construction industry. Additionally, the U.S. Department of State issued a travel warning for El Salvador: "Transnational criminal organizations conduct narcotics, arms trafficking, and other unlawful activities throughout the country and use violence to control drug trafficking routes and carry out other criminal activity. Other criminals, acting both individually and in gangs, commit crimes such as murder-for-hire, carjacking, extortion, armed robbery, rapes, and other aggravated assaults. El Salvador, a country of roughly six million people, has hundreds of known street gangs totaling more than 20,000 members. Gangs and other criminal elements roam freely day and night, targeting affluent areas for burglaries, and gang members are quick to engage in violence if resisted." *Travel Advisory, El Salvador*, issued January 23, 2013. In the aggregate, the AAO finds the applicant's father would suffer extreme hardship if he were to relocate to El Salvador.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her lawful permanent resident parent 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.