



(b)(6)

[Redacted]

DATE: FEB 28 2013

Office: CHICAGO, IL

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on motion. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Greece 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 admission to the United States through fraud or misrepresentation. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated June 25, 2009.

On motion, counsel for the applicant contends that the qualifying spouse recently underwent two major surgeries and that she continues to require the applicant's assistance during her rehabilitation. *Counsel's Brief*.

In support of his motion to reopen, the applicant submitted his own statement, a letter from the qualifying spouse's doctor, and a Supplemental Security Income statement. 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 [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.

In the present case, the record reflects that the applicant applied for and received an IR1 immigrant visa based upon his marriage to his former U.S. citizen spouse. The applicant received his immigrant visa on February 24, 1976 and entered the United States pursuant to that visa on February 28, 1976. It was later discovered that he was divorced from his former U.S.

citizen spouse on January 10, 1975. Although he had been living apart from his former spouse since April 30, 1974, he indicated on his visa application that he was married and was intending to join his spouse in the United States. In a prior decision dated January 10, 2012, the AAO found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his marital relationship on his visa application. The applicant does not contest this finding of inadmissibility in his motion to reopen. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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 herself can only be considered insofar as it causes extreme hardship to her qualifying 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 of Immigration Appeals (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 U.S. 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 v. INS*, 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.

In his motion to reopen, the applicant claims that his qualifying spouse relies on him for assistance due to her health problems. He states that the qualifying spouse cannot lift any weight so he must do all of the grocery shopping, laundry, and other household tasks. He indicates that he picks up the qualifying spouse’s prescriptions and runs other errands for her. He claims that the qualifying spouse cannot function without daily assistance and that no one else is available to provide the care she needs. Additionally, the applicant asserts that his qualifying spouse relies on her health insurance and the specialized care of her doctor in the United States and that she would be unable to obtain the same level of care in Greece. He also notes that she receives Supplemental Security Income. *See Statement, Social Security Administration*, dated January 19, 2012. Finally, the applicant states that his qualifying spouse would be unable to travel to Greece due to her poor health.

In a letter, the qualifying spouse’s doctor indicates that the qualifying spouse had spine surgery in late 2011 “with severe pain and severe disability.” *See Letter from* [REDACTED] dated January 24, 2012. Following her recovery, the qualifying spouse had “bilateral avascular necrosis of her hips. The right hip was extremely unstable and collapsed.” *Id.* As a result, the qualifying spouse underwent surgery to replace her right hip on December 12, 2011. Following that surgery, she suffered significant bleeding

related to a breathing disorder and required several blood transfusions. Additionally, the qualifying spouse remained in a rehabilitation center for approximately one month until she could perform basic personal hygiene and daily tasks. During the qualifying spouse's surgery and rehabilitation, the applicant provided emotional support, transported her to appointments, cared for her at home, and maintained the household so that she could rest and recover. The doctor states that he would not have scheduled the surgeries if the applicant were not available to provide support because the "procedures are quite serious and are known to have significant complications and significant demands on the patient, the doctor and the family." *Id.* Accordingly, the doctor indicates that the applicant's assistance "continues to be necessary for [the qualifying spouse's] recovery and her return to normal health." *Id.*

The AAO finds that the qualifying spouse would suffer extreme hardship if the waiver application were denied. The record reflects that the qualifying spouse suffers from serious health problems and disabilities which have hindered her ability to care for herself and complete basic tasks. According to her doctor, she continues to require regular care from the applicant in order to function on a daily basis and to continue her recovery. As a result, she would suffer extreme hardship on separation from the applicant.

Additionally, the qualifying spouse would experience extreme hardship if she were to relocate to Greece. The qualifying spouse has benefited from the specialized care she receives from her doctor in the United States, which has been facilitated by her health insurance. Additionally, she suffers from serious disabilities which would make her unable to travel abroad. Finally, although the qualifying spouse is originally from Greece, she has been residing in the United States since 1971 and became a naturalized U.S. citizen in 1994. Readjusting to life in Greece after such a long period of residence in the United States would be very difficult for the qualifying spouse. The AAO therefore finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded

and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied and the applicant's long period of residency in the United States. The unfavorable factor is the fact that the applicant obtained admission to the United States through misrepresentation of a material fact.

Although the applicant's violation of immigration law is serious and cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the waiver application will be approved.

ORDER: The motion is granted and the application is approved.