

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)

DATE: JAN 02 2013

Office: MOSCOW, RUSSIA

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,

[Handwritten signature]
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ukraine 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 attempting to procure a visa or admission to the United States through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 her lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated October 31, 2011. The Director also found that the applicant failed to demonstrate that she merited a waiver in the exercise of discretion. *Id.*

On appeal, counsel for the applicant asserts that the Director erred in denying the applicant's waiver application. He states that the qualifying spouse's medical, emotional, and financial difficulties will amount to extreme hardship if the applicant is not permitted to join him in the United States or if he must relocate to Ukraine. *Counsel's Brief.*

The documentation in the record includes, but is not limited to: counsel's brief; statements from the applicant's spouse and U.S. citizen daughter; letters from the qualifying spouse's friends and doctor; a psychosocial assessment; employment records; financial records; phone records; and a job offer for the applicant. 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 attempted to enter the United States as a visitor for pleasure on May 28, 2000 by presenting a photo-switched Russian passport bearing the name of another individual. During secondary inspection, she maintained that the passport and the visa it contained were genuine and that she was the individual named on those documents. The applicant was found inadmissible and was refused entry. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa or admission to the United States through fraud or misrepresentation. She does not contest this finding of inadmissibility on appeal. She is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a lawful permanent resident.

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 or to her U.S. citizen daughter 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.

The AAO finds that the qualifying spouse will suffer extreme hardship on separation from the applicant if the waiver application is denied. The qualifying spouse states that separation from the applicant has been extremely difficult for him. He indicates that he depends on the applicant for emotional and psychological support and has been depressed in her absence, resulting in difficulties concentrating at work and trouble sleeping. The qualifying spouse’s friends confirm that he has appeared depressed and withdrawn in the applicant’s absence and that the separation has caused a dramatic change in his personality. *See Letters from [REDACTED] and [REDACTED]*. His daughter has also noted that he has appeared very nervous and irritable. *See Psychosocial Assessment, [REDACTED]*, dated March 8, 2011. The psychosocial assessment indicates that the qualifying spouse suffers from depression and anxiety as a result of the applicant’s absence and that he has struggled with extreme sadness, difficulty sleeping, irritability, poor concentration at work, and high blood pressure. *Id.* A letter from his doctor confirms that he has high blood pressure in addition to hypercholesterolemia, lumbar degenerative disc disease, and knee pain/right knee osteoarthritis. *See Letter from [REDACTED] M.D.*, dated November 22, 2011.

The qualifying spouse has also experienced financial hardship because he has been supporting the applicant in Ukraine. The record contains numerous money transfer receipts indicating regular payments to the applicant. The qualifying spouse’s severe depression, which has negatively affected his job performance and his relationships with others, as well as his other

illnesses and his financial difficulties, constitute extreme hardship when considered in the aggregate. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

The AAO also finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Ukraine. The qualifying spouse notes that he has severe arthritis for which he must receive regular care. He states that he would lose his health insurance if he moved to Ukraine and that his condition would worsen because he would be unable to obtain adequate or affordable care there. The U.S. Department of State "strongly recommend[s]" that individuals with existing health problems not travel to Ukraine due to inadequate medical facilities and very limited accessibility for those with disabilities. *U.S. Department of State, Country Specific Information: Ukraine*. An emergency response can sometimes take hours, individuals who are hospitalized must provide their own bandages, medication, and food, and patients may be asked to pay in cash prior to receiving even emergency treatment. *Id.* The record therefore establishes that the qualifying spouse would have difficulty receiving necessary medical care in Ukraine.

Additionally, relocation to Ukraine would result in the qualifying spouse's separation from his U.S. citizen daughter, with whom he is close. The psychosocial assessment indicates that the qualifying spouse's depression is partially caused by his inability to protect his daughter from her sadness relating to the absence of the applicant. The assessment therefore recommends that the entire family be reunited to avoid further damage to the qualifying spouse's mental health. *See Psychosocial Assessment*. The negative impact of relocation on the qualifying spouse's serious physical and mental health problems, when considered together, would amount to extreme hardship for him in Ukraine. *See Matter of O-J-O-*, 21 I&N Dec. at 383; *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999). The AAO therefore finds that the applicant has established extreme hardship to her lawful permanent resident spouse as required under section 212(i) of the Act.

In that the applicant has established that the bar to her 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, the difficulties the applicant's U.S. citizen daughter has faced in her mother's absence, and the fact that the applicant has an existing job offer in the United States. *See Letter from* [REDACTED]. The unfavorable factor is the applicant's attempt to enter the United States with a passport and visa that did not belong to her.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.