



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 04 2013

Office: LIMA, PERU

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 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

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

The record reflects that the applicant is a native and citizen of Chile who was found to be inadmissible to the United States pursuant to section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failure to attend a removal hearing, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a benefit under the Act through fraud or the willful misrepresentation of a material fact, and pursuant to section 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 one year or more and seeking readmission within ten years of her last departure from the United States. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The field office director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, and she is statutorily inadmissible under section 212(a)(6)(B) of the Act and has not remained outside of the United States for five years; and she denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 28, 2012.

On appeal, counsel states that five years have passed since the applicant was removed and she is no longer inadmissible under section 212(a)(6)(B) of the Act, and he details the hardship her spouse would experience if her waiver is denied. *Brief in Support of Appeal*, undated.

The record includes, but is not limited to, counsel's brief; statements from the applicant, her spouse and her in-laws; and medical records. 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.

(ii) Falsely Claiming Citizenship

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The record reflects that the applicant was in possession of a fraudulent social security card and lawful permanent resident card which she used to obtain employment. She claimed to be a lawful permanent resident on her Form I-9 in order to receive employment with Temkin International. Upon review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and she does not require a waiver under section 212(i) of the Act. The legacy Immigration and Naturalization Service (INS) General Counsel's Office addressed in an April 30, 1991 published legal opinion the issue of whether an applicant who presents counterfeit documents in completing an Employment Eligibility Verification Form (Form I-9) is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides:

For two reasons, we conclude that an alien's false statements on Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any particular individual involves a private employment contract. Thus, false statements on Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Genco Op., Paul W. Virtue, Act. Gen. Co., *Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9)*, No. 91-39, 2 (April 30, 1991).

Similarly, the Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted:

The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

22 I&N Dec. 560, 571 (BIA 1999)(citations omitted).

The United States Courts of Appeals for the Tenth and Eighth Circuits have concluded that employment can be properly deemed a "purpose or benefit under the Act" in the context of applying section 212(a)(6)(C)(ii) of the Act. Specifically, when an applicant has made a false claim of U.S. citizenship for the purpose of obtaining employment with a private employer, he may properly be deemed inadmissible under section 212(a)(6)(C)(ii) of the Act. *Rodriguez v. Mukasey*, 519 F.3d 773, 777 (8<sup>th</sup> Cir. 2008)(stating that "the explicit reference to [U.S.C.] § 1324a [section 274A of the Act] in [U.S.C.] § 1182(a)(6)(C)(ii)(I) [section 212(a)(6)(C)(ii)(I) of the Act] indicates that private

employment is a purpose or benefit of the Act.”); *Kechkar v. Gonzales*, 500 F.3d 1080, 1084 (10<sup>th</sup> 2007)(finding that “[i]t appears self-evident that an alien who misrepresents citizenship to obtain private employment does so, at the very least, for the purpose of evading § 1324a(a)(1)(A)'s prohibition on a person or other entity knowingly hiring aliens who are not authorized to work in this country.”).

However, these decisions are limited to an analysis of the application of section 212(a)(6)(C)(ii) of the Act, and the conclusions are based on the reference to section 274A of the Act found in section 212(a)(6)(C)(ii) of the Act. Section 274A of the Act renders it unlawful for an employer to hire an alien without authorization from USCIS, thus section 212(a)(6)(C)(ii) of the Act specifically contemplates false claims of U.S. citizenship for the purpose of employment in the United States. Section 212(a)(6)(C)(i) of the Act is more limited in scope than section 212(a)(6)(C)(ii) of the Act, as it does not reference section 274A of the Act and it does not reach false representations made for purposes or benefits under other Federal or State laws. *See* section 212(a)(6)(C)(ii) of the Act. Thus, the finding of the BIA and Federal courts that employment is a “purpose or benefit under the Act” in the context of the application of section 212(a)(6)(C)(ii) of the Act does not constitute a finding that employment is also a “benefit under the Act” as contemplated by section 212(a)(6)(C)(i) of the Act.

Furthermore, in the present matter, the applicant committed misrepresentation by presenting a lawful permanent resident card to a private employer, not a U.S. government official authorized to grant visas or other immigration benefits. Outside of the transit without visa context, fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, “must be made to an authorized official of the United States Government” in order for inadmissibility under section 212(a)(6)(C) of the Act to be found. *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of D-L- & A-M-*, 20 I&N Dec. 409, 411-12 (BIA 1991)). Therefore, the record fails to establish that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act. The applicant has not made a false claim of U.S. citizenship, thus she is not inadmissible under section 212(a)(6)(C)(ii) of the Act.

Section 212(a)(6)(B) of the Act provides, in pertinent part:

- (B) Failure to attend removal proceedings.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien’s inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien’s subsequent departure or removal is inadmissible.

The applicant entered the United States with a B-2 visa on September 5, 1999; she did not receive an extension of her visitor status; she was placed in removal proceedings; she was ordered removed on June 4, 2007; and she was removed from the United States on August 17, 2007.

The field office director states that the applicant was ordered removed *in absentia* on June 16, 2004 and is therefore inadmissible under section 212(a)(6)(B) of the Act. However, the record does not

reflect that she was ordered removed *in absentia* on June 16, 2004; rather, it reflects that she attended a hearing in which she was ordered removed on June 4, 2007. The AAO finds that the applicant is not inadmissible under section 212(a)(6)(B) of the Act.

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

(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 [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

The applicant accrued unlawful presence from March 4, 2000, the date her visitor status expired, until her August 17, 2007 removal. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her August 17, 2007 removal from the United States.<sup>1</sup>

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<sup>1</sup> The applicant was convicted under Utah Statutes § 76-6-602 of retail theft, a class B misdemeanor, on August 21, 2001, and she was sentenced to six months imprisonment, which was suspended, and a \$1,000 fine. The AAO will not determine whether the applicant's conviction renders her inadmissible under section 212(a)(2)(A)(i)(I) of the Act because even if the AAO found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, she would be eligible for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act, as the maximum penalty for a class B misdemeanor in Utah is six months and the applicant was not sentenced to a term of imprisonment in excess of six months.

A waiver of inadmissibility under section 212(a)(9)(B) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case 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*, 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 at 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 states that the applicant's spouse does not speak Spanish; adjusting to a new culture with his emotional and mental issues would likely trigger more emotional and mental problems; he would lose his Medicare and Medicaid benefits; he relies on his family for emotional and financial support; he is able to survive based on his housing subsidy from HUD; counsel also indicates that the applicant has not been able to find steady work in Chile; he has fears about flying and his back problems would make a long a flight a major issue; and he would not be able to qualify for a resident visa in Chile due to his medical, criminal and financial issues. The applicant states that Chile is a dangerous place and her spouse likes peaceful places.

An April 6, 2009 report from the Social Security Administration details the applicant's spouse's medical problems, finding him to be disabled and eligible for benefits. His medical records reflect that he has a history of anxiety, depression and schizophrenia.

The record does not include documentation to support the claims related to country conditions or the claims that the applicant's spouse would be unable to receive a resident visa there. The record is not clear as to the amount of Medicare and Medicaid benefits, if any, that he receives, or of the amount of his social security benefits. The record does not reflect that he would be unable to receive medical treatment in Chile or that he would not receive his social security disability payment there. Although the applicant's spouse would experience difficulty in Chile, he would have the applicant's support, and the AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that he would suffer extreme hardship if he relocated to Chile.

Counsel states that the applicant's spouse was extremely troubled before he met the applicant; he had a miraculous change in his life after he met and married the applicant; and he returned to his prior state after the applicant was removed. Counsel states that the applicant's spouse has been totally disabled since 1994 as adjudged by the Social Security Administration; his disorders include back problems and situational depression; he has struggled with mental and emotional issues, including suicidal thoughts and antisocial behavior; he has had many problems with law enforcement; his primary source of income is from his disability benefits and he has been living below the poverty line for years.

Counsel states that the applicant helped her spouse with the physical chores of daily life and this helped him avoid pain; that his quality of life improved dramatically with the applicant in his life; that he grew closer to his own family, from whom he was estranged, when the applicant was present; that his problems with law enforcement were much less when he was with the applicant; that the applicant sometimes worked two jobs and that income helped her spouse immensely; that she helped him manage his money; and that she helped him control his violent tendencies.

Counsel states that the applicant has been gone for five years; her spouse is now in a position like he was before he met the applicant; he is now suffering from schizophrenia; and his finances have gotten worse and he lives in a small subsidized housing unit with no car.

The applicant's spouse details his closeness to the applicant and makes similar claims as counsel. The applicant details her closeness to her spouse and states that he is depressed due to loneliness. She states that her spouse does not have any friends and she is the only one who makes him happy.

The applicant's spouse's father states that the applicant's spouse was a totally different person when he was with the applicant; he was coming to family functions when she was here; he is having problems with depression over her leaving; and he needs her support and guidance in life. The applicant's spouse's mother details the applicant's spouse's history of physical, emotional and relationship problems, and states that the happiest she had seen him was when he was staying in a farm house with the applicant. The record reflects that the applicant was employed while in the United States.

The record reflects that the applicant's spouse has emotional and medical issues, and the applicant helped him with several aspects of his life while she was in the United States. Considering the hardship factors mentioned, and the normal results of separation, the applicant's spouse would experience extreme hardship if he remained in the United States.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the

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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.