



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 11 2013** Office: CHICAGO, ILLINOIS

IN RE:

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his United States citizen spouse.

The Field Office Director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of Field Office Director* dated October 21, 2011.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible as he did not make a willful misrepresentation, and that the qualifying relative spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility.

The record contains, but is not limited to: counsel's brief, statements from the applicant and the applicant's spouse, letters from family and other interested parties, medical records, financial documents, as well as various immigration applications and decisions. 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, in pertinent part:

- (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 indicates that in May of 2001, the applicant applied for a United States visa and submitted information indicating that he was employed with [redacted] during

this process. Further investigation by a consular officer revealed that the applicant did not work for [REDACTED] at any time, and the visa application was denied. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i) for attempting to procure a visa through willful misrepresentation of a material fact.

On appeal, the applicant indicates that he had no knowledge of the use this employment information in his application for a visa, since he attempted to procure the benefit through an agent and signed a blank form. Counsel submits a detailed brief, with cites to relevant legal authority, to support that an applicant must be found to have willfully made a misrepresentation in order to be found inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO agrees with counsel's interpretation of the elements of inadmissibility under section 212(a)(6)(C)(i) of the Act, including that the misrepresentation in question must be attributable to the applicant in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be proper. However, whether the applicant knowingly submitted the false information and documentation with his visa application is a factual question that must be resolved through probative evidence and explanation. The applicant bears the burden of showing by a preponderance of the evidence that he was unaware of the false representations in his application. *See* section 291 of the Act, 8 U.S.C. § 1361.

It is uncontested that the applicant's original signature appears on his nonimmigrant visa application form. The signature appears directly below an attestation, in Polish, that the applicant certifies that he read and understood the content of the application, and that the information is true and correct. This fact weighs strongly in favor of attributing the information and evidence provided in his application to him. Counsel and the applicant assert that the applicant signed a blank form and his agent is solely responsible for adding false information and evidence. They each provide that the applicant contacted the agent after learning of the fraudulent application and inadmissibility charge, and that he was directly informed of the details of the deliberate misrepresentation and the complicity of the company with which it was claimed he worked. However, the record lacks any evidence of this communication. Further, despite the fact that the applicant alleges he was a victim of fraud by a still-existing and operating company, he has not indicated or shown that he has sought to take action against them, such as filing a complaint with Polish authorities.

The AAO appreciates the challenge of presenting evidence to show that an illegal act took place, and that acquiescence from the alleged offending company in this regard is unlikely. However, as presently constituted, the applicant has not presented sufficient evidence to overcome the fact that he signed the nonimmigrant visa application that is the direct basis of his inadmissibility. Accordingly, he has not shown that he was erroneously found inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent 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 the present

case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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. *Salcido-Salcido*, 138 F.3d 1292 (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.

Counsel indicates that the applicant's spouse would suffer financial, emotional and medical hardship if the applicant were required to leave the United States based on his inadmissibility. *See Counsel's Brief in Support of Appeal*, dated December 14, 2011. The applicant's counsel states that the qualifying spouse's financial stability would be harmed if the applicant departed the United States because she relies on his income to help pay the debts they have accrued together. *Id.* Counsel also asserts that the qualifying spouse would suffer emotional distress if required to leave her family ties in the United States to relocate with the applicant. *Id.* Counsel also asserts that the applicant's spouse is suffering from depression, anxiety and insomnia due to the applicant's immigration issues and has consulted medical practitioners regarding these conditions.

The applicant's spouse indicates that the applicant has been emotionally and financially supportive throughout their marriage. The applicant's spouse also indicates that she might be unable to continue her education if her husband were to leave the United States because it would be difficult to support this endeavor on her own. The applicant's spouse states that they currently share several debts as a couple such as automobile payments, credit cards and utilities and it would be difficult for her to meet these obligations without the applicant's income. The applicant's spouse also states that she is suffering from stress due to her worries about the applicant's immigration issues and has consulted with her medical doctor and a psychologist in order to handle this condition. *Id.* The applicant's spouse submitted an evaluation from Clinical Psychologist, [REDACTED], PsyD, indicating that according to Mrs. [REDACTED], she has struggled with symptoms of depression for many years and attributed her condition in large part to a history of family discord which has been exacerbated by the present immigration situation of the applicant. *See [REDACTED] evaluation*, dated December 8, 2011. Dr. [REDACTED] also indicates in his report a diagnosis of symptoms of major depression and possibly posttraumatic stress disorder. *Id.* The applicant's spouse also submitted a letter from Dr. [REDACTED] indicating the need for routine diagnostics every sixth month period after an abnormal pap smear. *See letter from Dr. [REDACTED]*, dated May 17, 2011. The applicant's spouse also submitted a note from Dr. [REDACTED] indicating the applicant's spouse's concerns regarding Attention Deficit Disorder after having difficulty focusing on her coursework, and the decision to try a prescription of low dose Adderall over the course of a month. *See note from [REDACTED] M.D.*, dated March 9, 2011; *see also prescription script for D-Amphetamine Salt Com XR 5MG Caps, Quantity 30*. The applicant's spouse further indicates that she would be unable to relocate to Poland with the applicant because of her strong family ties

in the United States and the lack of educational and employment prospects in that country. The applicant has also submitted a number of affidavits from interested parties asserting the qualifying relative's ties to the United States.

While the applicant indicates that his United States citizen spouse would suffer extreme financial and emotional hardship due to his inadmissibility, the documentary evidence does not sufficiently support these assertions. The debts accrued according to the evidence presented are those which would normally be accumulated during the course of a marriage and have not been demonstrated to be unusual in nature. Although it may be difficult for the applicant's spouse to manage this debt on her own, there has been insufficient evidence offered to establish that these financial burdens would be more extreme than those which would commonly occur in such circumstances.

In addition, the applicant also presented evidence that his qualifying spouse has been diagnosed with depression and possible post-traumatic stress disorder. The applicant's spouse through her own statements to the psychologist indicated that she felt she suffered life-long symptoms of these conditions due to dysfunction within her family prior to her marriage to the applicant. The record lacks sufficient explanation in order for the AAO to assess the impact of the applicant's inadmissibility on his spouse's mental health in light of prior challenges and other current stressors. There was also no further evidence of a treatment plan beyond a single follow-up visit. *Id.*

Furthermore, when visiting Dr. [REDACTED], M.D. to discuss her issues regarding lack of focus, the applicant's spouse did not identify the applicant's inadmissibility as a possible cause and instead discussed the possibility of suffering from Attention Deficit Disorder according to the note submitted into evidence. There are also copies of prescriptions for what appear to be sleeping pills by the brand name "Lunesta" included as evidence regarding the applicant's spouse's hardship. However, no specific information has been offered regarding which medical practitioner prescribed this medication, or under what circumstance it was prescribed.

Finally, although it might not be the most desired choice to relocate to Poland, it has also not been demonstrated that it would cause extreme emotional hardship to the qualifying spouse. While the applicant's spouse does in fact have strong family ties in the United States, the applicant has not shown that she would be unable to visit her extended family. There is also insufficient evidence to support the assertions made that the applicant's spouse would be unable to find employment or a medical practitioner to perform routine diagnostic screenings in Poland.

The Department of State Fact Sheet for Poland, dated October 25, 2012, indicates:

Strong economic growth potential, a large domestic market, tariff-free access to the European Union (EU), and political stability are prime reasons that U.S. companies do business in Poland.

The Department of State Travel Advisory Report, dated July 23, 2012, also indicates:

Adequate medical care is available in Poland, but hospital facilities and nursing support are not comparable to American standards. Physicians are generally well trained, but specific emergency services may be lacking in certain regions, especially in Poland's small towns and rural areas. Younger doctors generally speak English, but nursing staff usually do not. Doctors and hospitals often expect immediate cash payment for health services. Medications are generally available, although they may not be specific U.S. brand-name drugs.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise above the common results of removal or inadmissibility to the level of extreme hardship, whether she relocates to Poland or remains in the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse 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 rests with the applicant. *See* 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.