



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **JAN 14 2013**

OFFICE: NEWARK

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

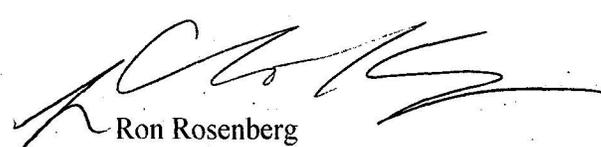
ON BEHALF OF APPLICANT:

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Netherlands 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 seeking to procure admission to the United States through fraud or willful misrepresentation. The applicant is the wife of a U.S. citizen 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 to reside with her U.S. citizen husband.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, failed to show that her inadmissibility would cause extreme hardship to a qualifying relative, and denied the application accordingly. *Decision of Field Office Director*, dated April 19, 2012.

On appeal, counsel submits a brief, a new affidavit from the qualifying relative and a letter from the [REDACTED] dated May 9, 2012. The record also includes, but is not limited to: affidavits from the applicant and her husband; medical documents for the applicant's husband's parents; photographs, and tax records for the applicant's husband. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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....

The applicant in this case previously admitted in a sworn statement to providing false information to immigration officials in order to enter the United States. *Record of Sworn Statement*, signed by the applicant on February 28, 2012. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure an immigration benefit through willful misrepresentation of a material fact. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

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. 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 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.

The record does not establish that the applicant’s spouse would experience extreme hardship if he were to relocate to the Netherlands with the applicant. On appeal, counsel asserts that the applicant’s spouse will suffer emotional and financial hardship upon relocation. The record establishes that the applicant’s husband has been living in the United States since 1993, his immediate and extended family members live in the United States, he works in a family-owned business on a part-time basis and is very active in his Church where he is a Deacon. The applicant’s husband claims that he will experience emotional hardship due to separation from his family. The record does not include evidence showing that the applicant’s husband is unable to maintain family ties with visits and communications from the Netherlands.

Counsel claims that the applicant’s husband will be prevented from practicing his religion in the Netherlands, but the record contains no evidence to support this claim.

The applicant’s husband further claims that he is unable to relocate because his aging parents are in need of his help, including language interpretation at and transportation to medical appointments. The record contains notes from the applicant’s parents documenting their current medical prescriptions and showing that the applicant’s husband is listed as their emergency contact. However, the record does not include evidence documenting the specific medical needs of the applicant’s husband’s parents, or other evidence regarding, for example, the unavailability of other immediate or extended family members to meet those needs or the inability of the applicant’s husband’s parents to meet their own needs.

Regarding financial hardship upon relocation, the applicant's husband claims that he will be unable to find employment in the Netherlands since he cannot speak Dutch and that the applicant cannot earn enough to support the family alone. However, the record contains no evidence to support this claim of financial hardship upon relocation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the applicant has demonstrated her husband's substantial family ties in the United States, the record, in the aggregate, does not indicate that the degree of emotional and financial difficulties that the applicant's husband would face upon relocation rises to the level of extreme hardship.

The record also does not establish that the applicant's husband would experience extreme hardship upon separation from the applicant. The applicant's husband states that he cannot imagine his life separated from the applicant, his soul mate. The applicant's husband claims that he is suffering from anxiety and depression, cannot sleep or concentrate on work, and has lost weight when he thinks of his new wife having to leave the United States. However, the record lacks medical evidence that the applicant's husband's mental health or emotional well-being has suffered or would suffer due to the applicant's inadmissibility. A letter from the Archbishop of the applicant's husband's church further states that the separation of the applicant and her husband would not be grounds for divorce in accordance with Syriac-Orthodox teachings and as a result, separation would not allow the applicant or her husband to remarry. See *Letter from the* [REDACTED] dated May 9, 2012.

However, the record does not establish that the applicant and her husband are unable to continue their marriage after relocation to the Netherlands or while living apart with occasional visits.

While emotional difficulties are common results of inadmissibility, the record, in the aggregate, does not establish that the applicant's spouse has or would suffer extreme hardship in the event of separation from the applicant.

On appeal, the applicant has failed to establish extreme hardship to a qualifying relative 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 a 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.