



(b)(6)

DATE: **JAN 16 2013**

Office: PHILADELPHIA

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Algeria 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 procuring a U.S. visa by fraud or misrepresentation. He is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility and is seeking a waiver of inadmissibility in order to reside with his wife in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, February 21, 2012.

On appeal, counsel for the applicant contends that the denial erred as a matter of law and fact in not considering all the evidence submitted and thus in finding no extreme hardship, and submits a brief focusing on new hardship evidence submitted at the time of the applicant's adjustment of status interview, consisting of a psychological evaluation. The record also includes documentation supporting the applicant's applications for adjustment of status and waiver of inadmissibility, including, but not limited to: tax returns; hardship statements; job letters; medical records; and copies of passports, a visa, and entry stamps. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

- (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)(1) of the Act provides:

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 [...].

The record reflects that, on August 14, 2006, the applicant interviewed for a nonimmigrant visa, told the consular officer her was married, and was issued a three-month validity, multiple entry, B-2 visa. He does not contest that he intentionally misrepresented his marital status because that was the only way to get a visa. Entering the country in B-2 status on September 14, 2006, he was admitted for six months and has not departed the United States. On August 23, 2010, he married the petitioner, his qualifying relative herein.

A waiver of inadmissibility under section 212(i) 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. The applicant's wife is the only qualifying relative in this case. 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-Morales*, 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 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.

Regarding hardship from relocation, counsel for the applicant contends that moving to Algeria would impose extreme hardship on the applicant's wife. Official U.S. government reporting regarding safety and security issues substantiates this claim. Since issuing the September 2011 travel warning cited by counsel, the U.S. Department of State (DOS) has twice reissued the warning, most recently "urg[ing] U.S. citizens who travel to Algeria to evaluate carefully the risks posed to their personal safety. There is a high threat of terrorism and kidnappings in Algeria." *Algeria—Travel Warning*, DOS, September 13, 2012. This update indicates that the threat described in country condition information continues unabated:

Terrorism continues to pose a threat to the safety and security of U.S. citizens traveling to Algeria. Terrorist activities, including bombings, false roadblocks, kidnappings, ambushes, and assassinations occur regularly, particularly in the Kabylie region east of Algiers. Terrorists continue to use vehicle-borne explosive devices [and] [...] homemade rockets as well as daisy-chain explosive attacks similar to those used in Iraq. Kidnapping by terrorist organizations is a real threat to U.S. citizens in Algeria, particularly outside major cities (see below). The same group that has claimed responsibility for these attacks, al-Qaida in the Islamic Maghreb (AQIM), operates throughout most of Algeria [...].

Algeria—Country Specific Information, DOS, June 14, 2011.

Official recognition that problems in Algeria are ongoing establishes that moving there would go beyond mere inconvenience and the usual or typical results of removal or inadmissibility. The record also reflects that the qualifying relative: speaks neither the French used in much of the country nor the local Berber dialect spoken by the applicant's family in the region where they would live; has no ties to the country other than her husband's family with whom she cannot communicate; and would have difficulty obtaining prescriptions needed to treat chronic diarrhea caused by her irritable bowel syndrome (IBS) and her chronic depression and anxiety. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record shows that a qualifying relative would suffer extreme hardship by relocating abroad.

Regarding separation, the applicant's wife contends that the prospect of her husband's absence has caused her emotional, physical, and financial hardship, and that these would worsen if he were unable to remain in the United States. Medical records reflect that intestinal problems which began

when she moved to Saudi Arabia in 1984 have since been diagnosed as IBS, with accompanying severe abdominal pain. A psychologist evaluated the applicant, his wife, and her 20 year old daughter who live together as a family unit. Besides noting the qualifying relative's complaints about worsening IBS symptoms, he observed her to be suffering from anxiety, insomnia, appetite loss and associated weight loss, and suicidal thoughts. See *Psychological Report*, July 26, 2011. The report contains a detailed history consistent with the qualifying relative's own statement that she previously experienced the sudden death of her first husband in Saudi Arabia, had to deceive her in-laws there in order to be allowed to leave the country with two young children (and pregnant with a third), and had to subsist on welfare for many years. The report recognizes that the upheaval in the qualifying relative's life after her first husband's death heightens her sensitivity to the fear that the applicant will be removed. The psychologist recommends that she continue on her prescribed medications, as well as receive counseling and psychiatric treatment. There is no documentation of psychiatric care or psychotherapeutic treatment on record. The record reflects that she and the applicant care for her 20 year old daughter, who has severe enough scoliosis that she must wear a back brace and has been unable to work, but does not show the applicant has training to provide skilled care in this regard.

Regarding financial hardship, there is no documentation supporting the contention that the applicant pays the bills and supports his wife and her daughter. Tax returns and job letters establish that the applicant's wife earns \$40,000 annually and has held the same job since 2000, but there is no record that the applicant has contributed earnings to household income. There is no documentation that the applicant works part time in a pizza restaurant, and the claim that he is able to work as a machinist once his immigration problems are resolved is unsubstantiated by any evidence of his educational background, vocational training, or job history. 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)).

Coupled with the lack of evidence showing the applicant's departure will impose financial hardship, the documentation of medical and psychological issues reflects that the applicant has not established his wife is suffering and will continue to suffer extreme hardship if he is unable to remain in the United States. The AAO recognizes the impact on the applicant's wife of separation from the applicant will be heightened by the circumstances under which she was widowed and lived as a single parent until marrying the applicant. The record reflects, however, that she has been with the same employer since 2000 and has two adult children in her support network (besides the third adult child who lives with her). The situation of the applicant's wife, if she remains in the United States, does not go beyond the common or typical results of removal to rise to the level of extreme hardship based on the record.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not

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result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for 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.