



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

(b)(6)

[REDACTED]

DATE: **JAN 25 2013**

Office: WASHINGTON FIELD OFFICE 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

for 

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Lithuania 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse 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 with her U.S. citizen spouse.

The Field Office Director concluded that the applicant is inadmissible for misrepresenting the purpose of her visit at a port of entry when she presented a B2 visa and stated that she intended to visit her boyfriend, but then married her boyfriend two days later. The Field Office Director also found 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 January 26, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding the applicant inadmissible for misrepresenting her intent when seeking a visitor's visa to the United States. Counsel states that although the applicant married her boyfriend two days after entering the United States as a visitor, she did not intend to marry him at the time she presented her visa at the port of entry. Counsel also contends that the qualifying spouse would suffer extreme hardship if the applicant were removed. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant, the qualifying spouse, and the qualifying spouse's family members; letters from the employers of the applicant and the qualifying spouse; financial records; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that the applicant arrived at an airport in the United States on June 30, 2010 with a B2 visa and informed an immigration inspector that she intended to visit her boyfriend. Two days later, on July 2, 2010, the applicant married her boyfriend, now her qualifying spouse. On October 1, 2010, the applicant and her qualifying spouse simultaneously filed Forms I-130 and I-485 on the applicant's behalf. The Form I-485 was denied based on a finding that the applicant had intended to immigrate to the United States and was therefore inadmissible for misrepresenting the purpose of her visit at the port of entry.

The applicant claims that at the time she entered the United States, she only intended to visit the qualifying spouse and had not planned to marry him. She states that upon her arrival, the qualifying spouse informed her that he had been anxious and depressed in her absence and that he did not want to live without her any longer. He surprised her by suggesting that they get married, but she agreed. She therefore states that she did not misrepresent her intentions at the time of her entry, but that shortly afterward she decided to marry the qualifying spouse. However, the evidence is insufficient to support the applicant's claim that she did not intend to marry the qualifying spouse at the time of her entry. Evidence in the record indicates that the applicant and the qualifying spouse had discussed marriage in the months prior to the applicant's visit to the United States and that although the applicant was aware of the availability of a fiancée visa, she wanted to get married sooner than such a visa would allow. Therefore, the AAO finds that the applicant has failed to meet her burden of demonstrating that she is not inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. *See Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978); *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967). She is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act as the spouse of a U.S. citizen.

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.

Pursuant to section 212(i) of the Act, 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 herself 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 qualifying spouse states that he would suffer extreme hardship if separated from the applicant. He asserts that he has struggled with depression and anxiety during periods of separation from the applicant and that those conditions would worsen without her support. He states that his stress regarding the applicant's possible removal has caused him to have severe nightmares, sleeplessness, and difficulty focusing on his work or maintaining relationships with his family. He also indicates that he would be unable to meet his financial obligations without the applicant's contributions. Additionally, the qualifying spouse states that he has suffered episodes of Bell's Palsy in the past and that those episodes could recur due to extreme stress caused by separation from the applicant.

The qualifying spouse also claims that he would suffer extreme hardship upon relocation to Lithuania. He indicates that separation from his close family members in the United States, upon whom he relies for emotional support, would cause his depression and anxiety to increase. Additionally, he states that his Bell's Palsy could return and that he does not believe he would be able to receive adequate medical care in Lithuania. Furthermore, the qualifying spouse fears that he would be unable to find adequate work in Lithuania due to the high unemployment rate there and the fact that he does not speak Lithuanian.

The AAO finds that the qualifying spouse would suffer extreme hardship if he were separated from the applicant. The qualifying spouse's step-father, mother, brother, and niece confirm that he has suffered from anxiety and depression in response to the applicant's immigration situation and that those symptoms would increase if the applicant were to return to Lithuania. *See Letters from [REDACTED]* A psychological evaluation in the record also indicates that the qualifying spouse suffers from anxiety disorder and depression which have been exacerbated by his stress over the applicant's immigration situation. As a result, he has had difficulty sleeping, trouble focusing at work, and physical symptoms. Additionally, the evaluation indicates that the qualifying spouse has sought emergency medical attention for his anxiety and that he has been prescribed anti-anxiety medication. The evaluation states that the qualifying spouse's anxiety and depression would worsen if the applicant were removed and that he may develop physical illness as a result. *See Psychological Evaluation, Samara Belman, Ph.D.*, dated February 18, 2012.

The AAO also finds that the qualifying spouse would experience extreme hardship if he were to relocate to Lithuania with the applicant. The qualifying spouse was born and raised in the United States and he has close family ties here. He has no ties to Lithuania other than the applicant and he is not familiar with the Lithuanian language or culture. The evidence also indicates that the qualifying spouse relies heavily on his family for emotional support and that his mental health would likely worsen if he were separated from them. In the aggregate, these factors would create extreme hardship for the qualifying spouse if the waiver application were denied. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of O-J-O-*, 21 I&N Dec. at 383.

In that the applicant has established that the bars 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 factor in this case is the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied. Additionally, the record contains a letter of recommendation from the applicant's employer and letters from several of the qualifying spouse's relatives attesting to the positive contributions she has made to their family. The unfavorable factor is the applicant's misrepresentation which resulted in her inadmissibility.

(b)(6)

Page 7

Although the applicant's violation of immigration law is serious and cannot be condoned, the positive factors in this case outweigh the negative factor. 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.