



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **JAN 29 2013** OFFICE: BLOOMINGTON, MN

FILE: [REDACTED]  
[REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i)  
and 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.

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, Bloomington, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago 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 procuring admission into the United States through willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), in order to live in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 23, 2011.

On appeal counsel asserts that section 237(a)(1)(H) of the Act applies to the applicant, and the applicant is not required to show hardship to a qualifying relative. *See counsel's brief attached to Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated July 11, 2011.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; Form I-130; Form I-485, Application to Register Permanent Residence or Adjust Status; a statement by the applicant's spouse; the applicant's spouse's employment documents; financial documents; naturalization, birth, marriage and death certificates; articles about conditions in Trinidad and Tobago; and photographs. 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 that:

- (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.

The record reflects that the applicant last entered the United States on December 28, 2006 using a non-immigrant visitor visa. During his adjustment of status interview, he admitted that upon entry and inspection into the United States, he misrepresented his intention and planned to remain in the United States with his wife. The immigration officer found him to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. The record supports the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest his inadmissibility.

Counsel argues that section 237(a)(1)(H) of the Act should apply in the applicant's case. However, section 237(a)(1)(H) of the Act applies to applicants in possession of an immigrant visa at the time of admission and, as counsel notes in his brief, in removal proceedings. *See Matter of Fu*, 23 I&N Dec. 985 (BIA 2006). The applicant in this case was neither placed in removal proceedings nor in possession of an immigrant visa at the time of his admission. Section 237(a)(1)(H) of the Act is not the subject of an I-601 waiver, therefore it does not apply in the applicant's case.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his children 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 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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. I.N.S.*, 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.

The applicant's 29 year-old spouse is a native of Trinidad and Tobago and a citizen of the United States. She states that she came to the United States when she was 4 years old. The record shows that she became a lawful permanent resident in 1992 and a naturalized citizen in 2010. She states that separating from her husband of eight years would be “traumatizing.” She feels that the possibility of their separation affects her psychologically and “is wearing on” her desire to live and ability to function. She states that she suffers from stress and has migraines daily. She notes that a psychological evaluation is included as evidence; however, in his brief counsel does not list this evaluation with the other documents the applicant submits on appeal and the record does not include a psychological report.

The record does not contain any other claims or evidence of separation-related hardship. Although the AAO acknowledges that separation from the applicant would cause emotional difficulties for the applicant's spouse, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by spouses of those deemed inadmissible. Thus, considered in the aggregate, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse suffers extreme hardship due to separation from the applicant.

The applicant's spouse indicates that she cannot relocate to Trinidad and Tobago because of the high crime, high cost of living, and inadequate health care system. Articles addressing these issues are submitted to corroborate her claims. The U.S. Department of State's report for Trinidad and Tobago states that "incidences of violent crime remains high" and warns visitors to exercise caution in urban areas and after dark. See Country Specific Information, Trinidad and Tobago (Mar. 21, 2011), [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1043.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1043.html). An article regarding the cost of living states that the minimum wage increased from \$9.00 to \$12.50 per hour in 2011 but does not indicate an increase in the cost of goods and services, as the applicant's spouse maintains. 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)). The record also lacks information regarding the financial impact of departure on the applicant's wife, evidence about the availability of work opportunities for her in Trinidad and Tobago, her family ties in the United States and Trinidad and Tobago, and any medical conditions that may be affected were she to relocate.

The AAO has considered cumulatively all assertions of relocation-related hardship, including the applicant's wife's adjusting to a country in which she has not resided for 25 years, her loss of employment, and stated concerns about conditions in Trinidad and Tobago. The AAO finds that, considered in the aggregate, the evidence is not sufficient to demonstrate that the applicant's spouse would suffer extreme hardship if she were to relocate Trinidad and Tobago to be with the applicant.

In proceedings for application 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. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.