



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 31 2013 OFFICE: NEWARK, NEW JERSEY

FILE: [REDACTED]

IN RE: [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:  
[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 District Director, Newark, New Jersey. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision affirmed and the waiver application denied.

The applicant is a native and citizen of Ukraine, 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 using a fraudulent visa and passport on two separate occasions. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a U.S. citizen, is his petitioner. 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.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated July 26, 2008. Thereafter, the applicant appealed the District Director's decision, and the AAO dismissed the appeal on May 19, 2011.

In the motion to reopen and reconsider, counsel asserts that the AAO erred in determining that the applicant's U.S. citizen spouse would not face extreme hardship if she were to relocate to Ukraine because her closest relatives lived there. The applicant's attorney states that the AAO failed to consider other issues, such as the qualifying spouse's lack of close relatives permanently living in Ukraine, her debts in the United States, her inability to have a child and her psychological hardships caused by the applicant's immigration issues.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); briefs and letters from the applicant's attorney; psychological reports; a medical report accompanied by the qualifying relative's doctor's resume; affidavits from the applicant and qualifying spouse; a country profile for Ukraine; materials regarding the qualifying spouse's student loans; a list of the qualifying spouse's expenses and debts; letters from the qualifying relative's friends, her daughter, her employer, and the applicant's employer; photographs of the applicant, the qualifying spouse, and her daughter; financial documentation; Form I-130; an Application to Register Permanent Residence or Adjust Status (Form I-485), as well as other materials accompanying the application. In the applicant's motion to reopen and reconsider, counsel provides an additional brief and copies of the U.S. permanent resident cards of the qualifying spouse's mother and daughter. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel on motion asserts that the AAO erred in determining that the applicant's U.S. citizen spouse would not face

extreme hardship if she were to relocate. The evidence submitted on motion includes an additional brief written on behalf of the applicant and copies of the U.S. permanent resident cards of the qualifying spouse's mother and daughter. The AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

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 Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [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 Attorney General [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 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. 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-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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

In the present case, the record reflects that the applicant came to the United States twice in 2002, using visas and passports issued in other names. On January 11, 2002, the applicant applied for admission into the United States with a visa and Czech passport issued to [REDACTED]. The applicant admitted to U.S. immigration officials that he had paid for his false travel documents and that he intended to work in the United States. He was removed from the United States on January 12, 2002. On March 5, 2002, the applicant was admitted to the United States using another fraudulent passport and visa under the name of [REDACTED]. The applicant's attorney does not contest the issue of the applicant's inadmissibility. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for attempting to procure and obtaining admission to the United States through fraud and misrepresentation.

The AAO previously found that, when considered in the aggregate, the evidence of record established that the qualifying spouse would suffer extreme hardship in the event that she remained in the United States while the applicant resides in Ukraine due to his inadmissibility. The AAO affirms its previous finding that the qualifying spouse would experience extreme hardship if she were to remain in the United States without the applicant.

The AAO also concluded in our prior decision, however, that the applicant failed to establish that the qualifying spouse, a native of Ukraine, would suffer extreme hardship if she were to relocate to Ukraine with him. With regard to the potential hardships to the qualifying spouse upon relocation, the AAO considered the applicant's attorney's assertions regarding her separation from her mother and daughter if she returned with the applicant to Ukraine. At the time of the appeal, the applicant's attorney conceded that the qualifying spouse's mother did not live in the United States; she was awaiting the approval of an immediate relative petition. Moreover, the qualifying

spouse's daughter indicated in her letter that she only lives with her mother during the summers, as she is currently attending university in Ukraine. The record also indicates that her daughter's father lives in Ukraine. As such, we found that it appears that the qualifying relative's closest family lives in Ukraine, and that other than the applicant, she has no family ties to the United States. In his motion brief, the applicant's attorney asserts that the AAO failed to consider that the qualifying spouse's mother and daughter were only living in Ukraine temporarily. The applicant's attorney contends that, while the qualifying spouse's mother's immediate relative petition had not been approved at the time of the appeal, "it was apparent that it would soon be approved soon." Further, the applicant's attorney also states that the mother is now a permanent resident living in the United States. The applicant's attorney also asserts that, although the qualifying spouse's daughter is currently studying in Ukraine, she intends on permanently residing in the United States after the completion of her degree. However, the record only contains copies of the qualifying spouse's mother's and daughter's permanent resident cards to support such assertions. There was no documentary evidence provided to demonstrate that her mother is living in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO, on appeal, also examined the qualifying spouse's potential economic hardships if she returned to Ukraine with the applicant. The AAO found that the evidence in the record was insufficient to establish that the applicant and his spouse would be unable to obtain employment and support themselves in Ukraine, as the applicant stated he had been employed in Ukraine in the past. In our prior decision, the AAO stated that insufficient evidence was submitted to support the assertions that the qualifying spouse would face economic hardships if she returned to Ukraine with the applicant. However, no additional evidence of financial hardship was provided in the applicant's motion to reopen and reconsider. Instead, the applicant's attorney contends that the AAO did not consider the impact of the substantial debt that the qualifying spouse owes in the United States and her inability to repay such debt if she relocates to Ukraine. The AAO examined the qualifying spouse's potential economic hardships in Ukraine and found that the evidence on the record was insufficient to establish that the applicant and his spouse would be unable to obtain employment and support themselves in Ukraine. As the applicant submitted no evidence to show that he and his spouse would be unable to support themselves in Ukraine, it was not possible to conclude that the applicant's spouse could not repay her debt.

On motion, the applicant's attorney also asserts that the AAO ignored the impact that relocating to Ukraine would have on the qualifying spouse's ability to conceive, because of their inability to find jobs and housing, their lack of family support and her substantial debt. However, the AAO did examine the qualifying spouse's difficulty to conceive as a hardship caused by separation from the applicant. According to the second addendum to the psychological report, the qualifying spouse feels that having a child alone in the United States would be impossible due to her lack of family ties and her inability to work and care for a baby without the applicant's financial assistance. The AAO found this a potential hardship upon separation. However, no evidence addresses her potential problems with conception upon relocation.

The applicant's attorney also contends on motion that the AAO failed to consider the psychological problems that the qualifying spouse would potentially incur upon relocation to Ukraine. The AAO examined the applicant's spouse's potential psychological hardships resulting from her separation from the applicant and found that her psychological hardships combined with her other hardships upon separation, were extreme. The evidence does not support counsel's assertions that the applicant's spouse will face psychological hardships if she were to relocate to Ukraine. Without documentary evidence to support his claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As such, the AAO affirms its prior decision finding that the applicant failed to provide sufficient evidence to demonstrate that her hardships upon relocation would amount to extreme hardship.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has not met that burden.

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.

**ORDER:** The motion will be granted, the previous decision affirmed and the waiver application denied.