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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
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Washington, DC 20529-2090



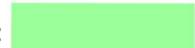
U.S. Citizenship
and Immigration
Services



DATE: JUL 05 2013

OFFICE: PANAMA CITY

FILE:



IN RE:



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:



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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant, a native of India and citizen of Panama was found inadmissible 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), due to his attempted procurement of admission to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. lawful permanent resident spouse.

In a decision dated November 10, 2011, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute and the application for a waiver of inadmissibility was denied accordingly. On December 20, 2012, the AAO dismissed the applicant's appeal of that decision.

On motion, former counsel for the applicant submits evidence regarding hardship to his U.S. lawful permanent resident spouse.¹ Also on motion, the applicant's former counsel states that the length of time since the applicant's misrepresentation was not properly considered as a matter of discretion. He also asserts that USCIS failed to explain the weight given to the letter from Dr. [REDACTED]. Counsel also challenges USCIS's analysis of the evaluation by [REDACTED].

A motion to reopen must state the new facts to be proved in the reopened proceeding 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 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, counsel filed a motion to reopen, submitting a letter from the applicant and updated general country conditions documentation.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which we addressed in our prior decision and the applicant has not disputed on motion.

On motion, counsel states that the length of time since the applicant's misrepresentation was not properly considered as a matter of discretion. The AAO notes that the issue of discretion is not relevant until the applicant has established extreme hardship to a qualifying relative. 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 U.S. citizen or lawful permanent resident spouse or parent. If

¹ The AAO notes that new counsel of record was entered in this case after the filing of the Form I-290B motion to reopen.

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 885 (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.

On motion, counsel states that USCIS did not explain the weight applied to a letter submitted by Dr. [REDACTED], MD. The record contains two letters from Dr. [REDACTED] one dated December 5, 2011 and the other dated April 6, 2011. Dr. [REDACTED] letter was considered in the aggregate with the other documentation of record. The AAO notes, however, that Dr. [REDACTED] most recent letter, dated December 5, 2011, contained inaccurate information concerning the credentials of the individual who evaluated the applicant's emotional health. That same letter stated that the applicant's spouse was under Dr. [REDACTED] care for the previous nine months for anxiety, depression, insomnia, separation anxiety, and hypertension. No additional information was provided in that letter or Dr. [REDACTED] previous letter dated April 6, 2011, regarding the applicant's spouse's symptoms or the effect of those symptoms on her daily functioning.

On motion counsel also states that USCIS "concludes that individuals normally experience Generalized Anxiety Disorder and Major Depressive Disorder when separated from family, and therefore Ms. [REDACTED] letter adds little value to the evidentiary requirements." Counsel further states that USCIS "provides no basis for such a medical conclusion" and claims that "[g]oing on the record is not sufficient for purposes of meeting the burden of proof in these proceedings," citing *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). However, the burden of proof is on the applicant in these proceedings, and *Soffici* does not support counsel's argument. *See* Section 291 of the Act, 8 U.S.C. § 1361. The record contains two letters written by Dr. [REDACTED] MS, LPC. In our prior decision, we noted that "Ms. [REDACTED] concluded that the applicant's spouse was suffering from Major Depressive Disorder and Generalized Anxiety Disorder as a result of the separation" from the applicant. We stated that "the symptoms described by Ms. [REDACTED] however, cannot be distinguished from the emotional hardship that is normally experienced by individuals separated as a result of immigration inadmissibility." We did not conclude, as counsel appears to contend, that *any* person diagnosed with Major Depressive Disorder and/or Generalized Anxiety Disorder is experiencing hardship normally experienced by individuals separated as a result of removal or inadmissibility. We have not made a medical conclusion, but rather conducted an individualized analysis of the particular facts of this case in relation to the legal standard required to obtain a waiver of inadmissibility under section 212(i) of the Act. We consider the severity and impact of any emotional hardship demonstrated to reach a legal determination of extreme hardship. A diagnosis of depression by a mental health professional, while probative, is not necessarily dispositive. As noted in our prior decision, the applicant's spouse's emotional hardship, as documented by the letters from Dr. [REDACTED] and Ms. [REDACTED] was considered in the

aggregate with the other evidence of record. We gave significant weight to the evidence of emotional hardship submitted, and we recognize that the applicant's spouse will endure emotional hardship as a result of separation from the applicant. The applicant has not demonstrated that we erred as a matter of law or policy in finding that the hardships the applicant would face, considered in the aggregate, do not rise to the level of "extreme."

On motion, counsel submitted two reports regarding country conditions in Panama: the U.S. Department of State Country Report on Human Rights Practices in Panama from 2011 and the Congressional Research Service (CRS) Report for Congress, November 27, 2012, Panama: Political and Economic Conditions and U.S. Relations. Counsel states that this documentation "further explain[s] the hardship that the applicant's spouse would face if forced to return to Panama to be united with the applicant." In the State Department report, counsel highlighted sections of the report regarding human rights abuses associated with freedom of the press, trafficking in persons, and child labor as well as problems with crime, harsh prison conditions, judicial effectiveness and discrimination against various groups. Counsel does not state how the applicant's spouse will be specifically affected by these conditions. In the CRS report, counsel highlighted a section indicating that crime increased significantly in Panama in 2008 and 2009. The AAO notes that the next paragraph of that report explains how in the subsequent years 2010 and 2011, "efforts by the Panamanian National Police have had an impact on reducing crime." Counsel also highlighted the following phrase in the section on human rights issues: "human rights problems continue in a number of areas." Again, counsel does not state how the applicant's spouse would be impacted by "human rights problems" in Panama. In our previous decision, we noted that the record indicated that the applicant's spouse reported to the therapist conducting her psychological evaluation that she had safety concerns in Panama, that the country was becoming more violent, and that she and her husband had been the victims of robberies. However, as stated in our previous decision, neither the applicant nor his spouse provided confirmation or explanation of these concerns and incidents in their letters. We also noted that there were no police reports or other documentation confirming the claimed robberies in the record. Although counsel submitted general reports relating to human rights and crime issues in Panama on motion, the documentation does not indicate how the applicant's spouse would be impacted in particular by those conditions. Consequently, we do not find that the evidence submitted on motion constitutes new facts warranted reopening the matter. Likewise, the applicant's letter submitted with the motion reiterates that separation causes the applicant's spouse hardship, but it adds no new details to the record.

In proceedings for an 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met the burden of demonstrating new facts or establishing that the decision was based on an incorrect application of law or policy. Accordingly, the motion is dismissed.

ORDER: The motion is dismissed.