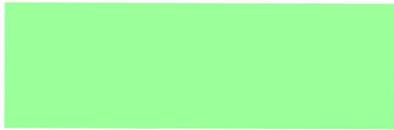




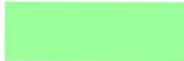
**U.S. Citizenship
and Immigration
Services**

(b)(6)

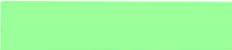


Date: **JUL 11 2013**

Office: ST. PAUL, MN

FILE: 

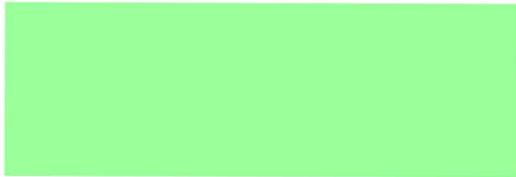
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. The AAO dismissed the appeal, finding that although the applicant established that her husband would suffer extreme hardship if he relocated to Vietnam, there was insufficient evidence in the record to show that he would suffer extreme hardship if he remained in the United States without his wife.

On motion, counsel contends the AAO erred in dismissing the appeal and asserts that the AAO did not consider the applicant's husband's affidavit which stated he would suffer emotionally, mentally, and financially if he remains in the United States without his wife. Counsel submits new evidence in support of the motion.

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 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Counsel has submitted a brief and new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the evidence already described in the AAO's previous decision, the record also contains: an updated letter from the applicant's husband, Mr. [REDACTED] a copy of the birth certificate of the couple's U.S. citizen daughter; an updated letter from Mr. [REDACTED]'s physician; copies of prescriptions; internet articles addressing health conditions and medications; and internet articles addressing the economy and income in Vietnam. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the AAO previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Counsel does not contest that finding on motion.

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 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.

After a careful review of the entire record, including the new evidence submitted on motion, there remains insufficient evidence to show that Mr. [REDACTED] will suffer extreme hardship if his wife’s waiver application were denied. If Mr. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding emotional and mental hardship, Mr. [REDACTED] contends in his updated affidavit that he has not been separated from his wife since they were married over two years ago, that the thought of separation causes him great emotional hardship including great stress and anxiety, that he and his wife care for and support each other, that they have worked together to establish their lives and raise a family, and that he does not know what he would do if his wife returned to Vietnam. Mr. [REDACTED] also contends the he does not know how to decide whether their daughter would live in Vietnam with his wife or remain in the United States with him and that it would be unfair for their child who would also suffer extreme hardship if she were separated from one of her parents. Although the AAO is sympathetic to the family’s circumstances, the record does not show that any hardship Mr. [REDACTED] will experience is atypical or unique compared to others in similar circumstances who are separated from a spouse. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship

as hardship that was unusual or beyond that which would normally be expected upon deportation). To the extent the record contains an updated letter from Mr. [REDACTED]'s physician, the AAO recognizes Mr. [REDACTED] has several chronic medical conditions, including hypertension and hyperlipidemia, and that he had an abnormal liver function test and has pre-diabetes. Although the input of any medical professional is respected and valuable, as stated in the AAO's previous decision, there is no suggestion in the record that he requires his wife's assistance in any way due to any medical condition. Despite his medical conditions, the record shows Mr. [REDACTED] continues to work at the same company he has worked for for the past twenty years and there is no contention he is limited in his functioning in any way. With respect to financial hardship, although the AAO acknowledges that articles addressing the economy and poverty in Vietnam were submitted on motion, nonetheless, the record does not support Mr. [REDACTED]'s claim that he would be unable to support his wife in Vietnam. According to tax documents in the record, Mr. [REDACTED] earned a total income of \$73,108 in 2010, and \$114,532 in 2009. Even assuming, as counsel contends, that the applicant earned the equivalent of \$185 per month in Vietnam, the AAO does not find that the record supports the contention that Mr. [REDACTED] would suffer hardship that is atypical or unique. The AAO notes that the record is inconsistent with respect to whether or not the applicant was employed while living in the United States. Although both the applicant and Mr. [REDACTED] contend in their affidavits that prior to having their child, the applicant worked to contribute to their daily expenses, there is no evidence addressing her previous wages and according to her Biographic Information form (Form G-325A), which she signed on February 15, 2011, she was unemployed for the past five years. The AAO also notes that according to the Form G-325A, both of the applicant's parents continue to live in Vietnam and the applicant does not address whether her parents would be able to help assist her upon her return to Vietnam. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband will experience if he decides to remain in the United States amounts to hardship that would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted but the underlying waiver application remains denied.