



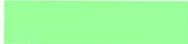
U.S. Citizenship
and Immigration
Services

(b)(6)

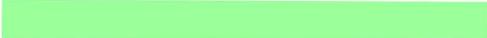


Date: JUL 23 2013

Office: LOS ANGELES

FILE: 

IN RE:

Applicant: 

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:



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.

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Handwritten initials, possibly "R.R.", in black ink.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. 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 granted and the underlying application is approved.

The applicant is a native and citizen of Syria, 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 record reflects that the applicant entered the United States in 2004 using a passport and visa under another name. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The Field Office Director found that the applicant failed to establish that his qualifying relatives, his United States citizen spouse and his lawful permanent resident father, would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 3, 2010.

On appeal the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. Consequently, the appeal was dismissed. *See Decision of the AAO*, dated September 18, 2012.

On motion counsel asserts that conditions in Syria have deteriorated and that the applicant's spouse now has a child. With the motion counsel submits a brief; a psychological assessment of the applicant's spouse; and a birth certificate for the applicants child. The entire record was reviewed and considered in rendering this decision.

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 that:

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 qualifying relatives in this case are the applicant's U.S. citizen spouse and his U.S. citizen father. 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 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 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 AAO, in its decision dated September 18, 2012, found that the applicant had established extreme hardship to his U.S. citizen spouse were she to relocate abroad to reside with the applicant as a result of his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that his U.S. citizen spouse or lawful permanent resident father would suffer extreme hardship were they to remain in the United States while the applicant relocated abroad. Specifically, the AAO determined that the applicant failed to provide detail and provided only limited supporting evidence explaining the exact nature of the spouse's emotional hardships and how such hardships are outside the ordinary consequences of removal. It further found no documentation of expenses or any indication that the applicant and his spouse are behind on financial obligations or that the spouse is financially responsible for other dependents. It noted that in a statement the applicant's father indicates that he would be devastated without the applicant near, but that no additional supporting information was provided.

On motion counsel states that the applicant would be in danger under current conditions in Syria and that his wife would face hardship if he were killed. Counsel also states that the applicant's spouse has given birth to their first child, causing more anxiety for her. Counsel states the spouse is terrified of the applicant returning to Syria, fearing violence, lack of food, inadequate hospitals, and poor communications, and that her fear of being unable to communicate with the applicant in a war-torn country has led to extreme depression and can result in further psychological deterioration.

A psychological assessment of the spouse states that she is terrified of the violence in Syria and is distressed thinking of the applicant living under dire conditions. She fears the lack of food and medical care in Syria and that she will be unable to contact the applicant. She fears that the lack of jobs there will limit his ability to financially provide for her and that she will become destitute and unable to support their daughter. It notes that she fears her emotions may affect the quality of care she provides for their child. The assessment states that the applicant's spouse experiences crying spells and insomnia, is not taking care of her appearance and cooks minimal meals unlike the customary quantities. It further states that she has diminished appetite, a drop in energy, difficulty completing chores, and less care for her appearance, and that her concentration and memory are suffering.

A review of the documentation on record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. The applicant's spouse continues to suffer emotional distress at the prospect of separation from the applicant and now has a baby, which would add to her emotional stress in the applicant's absence. Further, the continued and escalating violence in Syria would cause her worry for the applicant's safety and wellbeing.

The AAO notes that The U.S. Department of State "continues to warn U.S. citizens against travel to Syria and strongly recommends that U.S. citizens remaining in Syria depart immediately." It continues to state: No part of Syria should be considered immune from violence, and the potential exists throughout the country for hostile acts, including kidnappings. Indiscriminate shelling and aerial bombardment, including of densely populated urban areas across the country, have significantly increased the risk of death or serious injury. The destruction of infrastructure, housing, medical facilities, schools, power and water utilities has also exacerbated hardships inside the country. http://travel.state.gov/travel/cis_pa_tw/tw/tw_5897.html

Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 factors in this matter are the extreme hardships the applicant’s U.S. citizen spouse and child would face if the applicant were to reside in Syria, the applicant’s gainful employment and payment of taxes in the United States, community ties, the apparent lack of a criminal record, letters of support from family, and the passage of nearly 10 years since the applicant’s entry to the United States by fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant’s entry to the United States by fraud or willful misrepresentation.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that on motion, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

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 been met. Accordingly, the motion to reopen will be granted and the waiver application approved.

ORDER: The motion to reopen is granted. The waiver application is approved.