



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 30 2013

OFFICE: CHICAGO

FILE: [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:

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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 attempting to procure admission into the United States through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 her 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 August 29, 2012.

On appeal counsel asserts that the director's decision improperly applied the law, failed to consider relevant evidence and relied on facts not included in the records. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed September 28, 2012 and received by the AAO on March 21, 2013.

The record contains, but is not limited to: Forms I-290B, counsel's brief, Board of Immigration Appeals (BIA) and Executive Office of Immigration Review decisions and orders, various immigration forms and applications, letters from the applicant's spouse, the applicant's spouse's father, and health care professionals, medical records, financial documents, bank statements, a country-condition report, photographs, marriage and birth certificates, and identification documents. 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.

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.

The record reflects that the applicant entered the United States on July 14, 1997 with a visitor visa and was authorized to remain until January 13, 1998. The applicant remained in the United States and filed for asylum on February 5, 1999. Her application was referred to an immigration judge who denied her claim on July 10, 2003 based presenting a fraudulent birth certificate which placed her Jewish nationality and faith into question. The immigration judge found that as her identity was the central and critical element of her claim her submission of a fraudulent birth certificate indicated a lack of overall credibility. Based on the submission of a fraudulent document, the applicant has found to be inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not contest the inadmissibility.

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 or the applicant's spouse's relatives 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 39 year-old spouse is a native and citizen of the United States. Medical reports and a letter from the applicant’s spouse’s doctor indicate that he suffers from health conditions including hypertension, multi-vessel coronary artery disease, morbid obesity, and shortness of breath. He takes approximately seven medications for these illnesses. His doctor explains in a letter from May 2012 that he has been treating the applicant’s spouse for chronic medical problems since 2007 and even after aggressive treatment and medications, the applicant’s spouse continues to have “shortness of breath, inability to walk more than short distances, lack of energy and concentration and inability to write clearly or type on a computer.” Medical documents from October 2012 show that he continues to have dyspnea, or shortness of breath, and abnormal chest activity.

The applicant’s spouse’s physician comments in the May 2012 letter that without the applicant’s care, the applicant’s spouse would have great difficulty living independently, especially given his emotional dependence on his wife. The applicant’s spouse’s psychologist states he has been seeing the applicant’s spouse weekly since April 2012 and found his mental status to be

deteriorating because of the persistent fear of the applicant's separation from him. The applicant's spouse began to see a psychiatrist in September 2012 who indicates that the emotional crisis has exacerbated the applicant's spouse's medical problems. The psychiatrist notes that the applicant's spouse's conditions include panic disorder, generalized anxiety disorder, major depressive disorder, and chronic obsessive-compulsive disorder. He is taking anti-depressant, anti-anxiety, and antipsychotic medications as part of his treatment. The psychiatrist notes that the applicant's spouse was hardly managing his multiple stressors, including caring for his younger brother with mental and physical handicaps and his elderly father, thus the applicant's separation from him and his family would be devastating for the applicant's spouse.

The applicant's spouse and the applicant's spouse father states that as a family they care for the applicant's 31 year-old brother who has down-syndrome, the mental capacity of a small child, is deaf, cannot speak, cannot clean or bathe himself, does not trust those he is not familiar with and has lymphedema which is treated with surgeries. The statements suggest the applicant, the applicant's spouse, and the applicant's spouse's father are the three caretakers for the applicant's younger brother and are equally invested in this responsibility. The letters indicate that the applicant's spouse would have a great difficulty dealing with this obligation without the applicant.

The applicant states, and evidence in the records corroborates, that the applicant is the primary financial contributor to the household. Their expenses include a mortgage, car loan, student loan, the applicant's spouse's medical costs, and household expenses. The applicant states that without the applicant's income, he would not be able to meet his financial obligations. In addition, the applicant's employment provides medical insurance for her spouse which he requires to offset the costs of his medical procedures, tests and multiple medications.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including his mental and emotional stability, the added stress and responsibility of taking care of his younger brother and father without the applicant, and the inability to have financial stability. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant also demonstrated her qualifying spouse would suffer extreme hardship in the event that he relocated to Ukraine. The qualifying spouse states that he has never been outside of the United States and is not familiar with the language, customs and culture of Ukraine. He states that this would hinder him from obtaining employment there. He worries that the health care system in Ukraine would not be adequate for his conditions, and he would not be able to accurately communicate with the health care providers. Country-condition reports and letters from the applicant's spouse's physician corroborate his assertions about the lower standard of medical care in Ukraine. The applicant's spouse explains that he has a long standing relationship and trust with his physicians in the United States which he would be required to forfeit if he relocated to Ukraine.

The applicant's spouse states that he has a responsibility in taking care of his younger brother. His father laments that the applicant's spouse would become the legal guardian of his younger brother should anything happen to the applicant's father. The applicant's spouse states that traveling back and forth to the United States to help care for his younger brother would be financially impossible and taxing on his already ailing health.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his unfamiliarity with Ukrainian culture, his ability to gain employment in Ukraine, the lack of adequate medical care in Ukraine, and his close family ties and responsibility in the United States. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Ukraine to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301.

The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and

circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether he accompanied the applicant or remained in the United States; her family ties in the United States; her good character, as indicated in several statements; and her lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation of her identity as a critical element in her asylum application. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.