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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

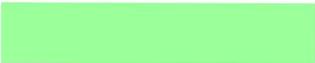


Date: **JUN 18 2013**

Office: SAN FERNANDO

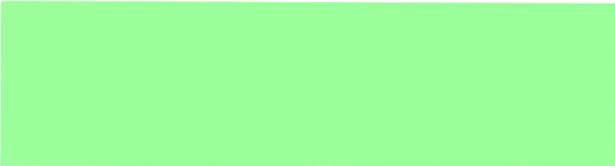
FILE: 

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 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, appearing to read "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Lebanon 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 an immigration benefit through fraud or misrepresentation. The record reflects that the applicant submitted a fraudulent employment letter in support of an I-140 petition for immigrant worker and related application for Alien Labor Certification. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative spouse would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 5, 2012.

On appeal counsel for the applicant contends prior counsel had failed to submit supporting documentation and USCIS erred by not affording the applicant the opportunity to supplement the record. With the appeal counsel submits a brief; a declaration from the applicant's spouse; medical documentation for the applicant and his spouse; financial documentation for the applicant and his spouse; and country information for Lebanon. 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:

- (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 applicant's spouse 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-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 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. *Salcido-Salcido v. INS*, 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.

On appeal counsel asserts the applicant's spouse is unable to financially support herself or the couple's three children as she has never been employed, has only a middle school education from Lebanon, and is not fluent in English. Counsel asserts the spouse suffers from scoliosis of the spine and degenerative disc disease with chronic neck and back pain, headaches and limited mobility that prohibits her from holding a job. Counsel asserts this makes the spouse dependent on the applicant for financial support and at risk of losing her home and she would otherwise be unable to provide financial support to her three daughters. Counsel asserts that if the spouse relocated she would suffer as country conditions information shows that Lebanon is dangerous. Counsel points to a U.S. Department of State travel warning about spontaneous violence between Lebanese who support the Syrian uprising and those who do not, which counsel asserts reflects a greater political turmoil, and she further asserts that extremist groups have targeted U. S. citizens. Counsel asserts that the applicant's daughters have not experienced the discrimination of women in Muslim countries and do not speak Arabic fluently, which would cause distress for their mother were they to live in Lebanon. Counsel states that a visit to Lebanon by the applicant's spouse and children in 2006 was interrupted by war, causing them to flee. Counsel further asserts that as the applicant suffers from diabetes and has undergone coronary bypass surgery his spouse fears for his health in Lebanon where counsel contends hospitals are inadequate. Counsel also asserts that as the applicant has been self-employed in the United States he may be viewed with suspicion of espionage if he returns to Lebanon after a long absence.

In her declaration the applicant's spouse states that the applicant is responsible for the financial care of the family as she has never had a job. She states that her medical problems cause her pain and that the family would not survive without the applicant providing a house and food and doing other tasks. She states that if the applicant returns to Lebanon she fears his health problems will kill him because of his daily medication needs and because hospitals would not care for him properly. She states she and her daughters could not live in Lebanon as it is dangerous due to political revolution in the Middle East and Muslim fundamentalists. She stated that her children were terrified during a visit to Lebanon in 2006 when the country went to war with Israel. She also states that her daughters do not understand how women in Lebanon are treated and she cannot bear watching them struggle to accept a completely different life.

Medical documentation submitted on record details the spouse's conditions including severe degenerative disc space height and anxiety. Medical documentation also shows the applicant with a history of coronary disease, Diabetes, and other health problems.

The AAO finds that the evidence on the record, considered in the aggregate, establishes that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied. The record establishes that the applicant's spouse is dependent on the applicant for financial support, given her limited education and work experience and her medical problems, and that without the applicant she would be unable to provide for her three children, causing extreme financial and emotional hardship to the applicant's spouse.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Lebanon. The applicant's spouse has health problems requiring ongoing treatment and she fears for her safety in Lebanon. A 2013 travel advisory from the U.S. Department of State urges U.S. citizens to avoid all travel to Lebanon because of current security concerns. It states that the potential for a spontaneous upsurge in violence remains while Lebanese government authorities are not able to guarantee protection for citizens or visitors. It also states that U.S. citizens have been the target of numerous terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorist activity continues to exist. *See Travel Warning-U.S. Department of State*, dated April 1, 2013.

Further, the record establishes that the applicant's children, natives and citizens of the United States, are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Lebanon would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children.

A review of the documentation in the 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. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

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. 296, 301 (BIA 1996). 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 BIA 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 BIA 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 relief must bring forward to establish that he 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 hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's long-term employment and payment of taxes, and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation to procure admission to the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.