

(b)(6)

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



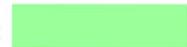
U.S. Citizenship
and Immigration
Services



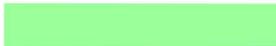
DATE: JUN 18 2013

Office: DETROIT

File:

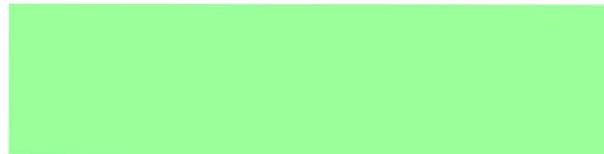


IN RE: Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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 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 Field Office Director, Detroit, Michigan, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of the former Yugoslavia and a citizen of Montenegro, 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 procuring or attempting to procure U.S. admission by fraud or misrepresentation. The applicant is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and family.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, October 1, 2012.*

On appeal, counsel for the applicant contends that USCIS abused its discretion and erred in misconstruing the extreme hardships that the applicant's wife and mother will suffer, as a result of the applicant's inadmissibility, if he is unable to remain in the United States. In support of the appeal, counsel submits a brief and resubmits documentation provided with the waiver application. The record contains documentation including, but not limited to: a qualifying relative's hardship statements; financial and medical records; a psychological evaluation; marriage, birth, and naturalization certificates; passports, green cards, and drivers licenses; and country condition information. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [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 indicates that the applicant procured admission in September 1996 by presenting a false passport issued in another person's name, but bearing his own photo, in Philadelphia. On September 6, 2011, he sought to adjust status to that of lawful permanent resident by filing Form I-485 concurrently with the Petition for Alien Relative (I-130) filed by his wife, as well as a waiver application to cure the fraud admitted in his adjustment application.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and lawfully resident mother are each a 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

For reasons discussed below, the AAO finds that the situation of the applicant's 76 year old mother, should the applicant be unable to remain here, involves circumstances which, on aggregate, meet the extreme hardship requirement under the Act.¹

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating to Montenegro, the record reflects that the cumulative effect of problems his mother would experience represent hardships that rise to the level of "extreme." The record indicates that departure of the applicant's mother would sever her connections with existing health care providers, expose her to lower quality care in Montenegro, and remove her from proximity to extended family members all of whom live in the United States. There is extensive evidence that, besides having Parkinson's disease diagnosed nearly 10 years ago, she is receiving ongoing treatment for arthritis and high blood pressure, has mobility issues, and suffers from mild dementia. The applicant's mother's health issues and established relationships with treatment providers reflect that moving to Montenegro, including the air travel involved, would subject her to serious medical risks. And, whereas the state of Michigan pays for the applicant's wife to provide homecare to her mother-in-law, relocating would deprive her of this benefit, interrupt continuity of care, and place her in a system of hospitals and clinics that do not meet U.S. standards. See *Montenegro—Country Specific Information*, U.S. Department of State (DOS), March 27, 2013.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to a country where neither she nor the applicant have maintained ties since she left 20 years ago during civil war and violence that spread throughout the region, and where she would experience decreased access to medical care on which her quality of life depends.

Regarding the claim of emotional hardship to the applicant's mother due to separation from the applicant, an extensive psychological evaluation of the applicant's wife observes that she, her husband, and her husband's mother were living together in the same house at the time the applicant's

¹ As our examination shows the applicant has fulfilled his burden regarding establishing extreme hardship to his mother, we need not address the hardship situation of his wife.

brother killed his wife and himself in 2008. During depression caused by her other son's murder-suicide, the applicant's mother required constant monitoring, which the applicant and his wife took turns providing. The record indicates that the applicant's mother would experience the loss of her son, who provides care while her daughter-in-law is at work, as a significant hardship. Further, her daughter-in-law believes that the applicant's absence will require her to place the applicant's mother in an institutional care setting which will hasten her physical and mental decline. Clear evidence that the applicant's mother will be unable to travel abroad to see her son due to her deteriorating health substantiates her fear that she will never see him again, if he departs the country.

The AAO notes that the record reflects circumstances showing an emotional attachment among the applicant and his mother that goes beyond the commonplace. They supported each other after experiencing the trauma of the applicant's brother's death five years ago. Removal of the applicant would leave his mother without essential custodial monitoring while his wife is at work, as there is evidence that no other family members are available to fulfill this role – her other children are unavailable due to the shared obligation of raising three children of the applicant's brother who were orphaned. The applicant and his wife provide round-the-clock care without which his mother would be unable to live at home.

Regarding the financial component of separation hardship, despite lacking specific information about the applicant's mother's financial resources² or the cost of her medical care, the record reflects her complete dependence on the applicant and his wife for home care and basic needs. There is evidence that, while the applicant has only contributed nominal earnings to household income,³ his presence and labors in the home allow his wife to maintain the housekeeping business she started in 2004 from which she reports annual earnings as head of household of approximately \$14,000. Counsel contends that this distribution of labor is necessary to the economic survival of the household. The AAO notes that the applicant's departure would burden household income directly, by eliminating his U.S. earnings, and indirectly, by forcing his wife to work fewer hours (either forfeiting hours as her mother-in-law's home helper or working less time outside the home at her housekeeping jobs), with both options reducing family income. Country condition information indicates that, even were the applicant to overcome poor prospects and find a job overseas, any income from such employment would be at the subsistence level leaving little to help support his wife and mother in the United States. There is evidence that the applicant's wife bought the family a home nine years ago, and counsel reports that any diminution in income will place this home ownership in jeopardy.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's mother will experience due to his inadmissibility rises to the level of

² She immigrated at the age of 56 and has no record of employment. We note that, when the applicant's wife's income was insufficient for her Affidavit of Support (I-864) to be approved, it was someone other than the applicant's mother who filed a Form I-864 as a joint sponsor.

³ The record shows that besides caring for his mother and daughter at home so that his wife can work, the applicant obtained work permission after filing to adjust status, began contributing income in 2011, and intends to continue to help support his family.

extreme. The AAO concludes based on the evidence provided that, were his mother to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects 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 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance 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 hardship the applicant's wife and mother would face if the applicant were to reside in Montenegro, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; passage of nearly 17 years since the applicant's misrepresentations; and his ready admission to and contrition about his misrepresentations. The unfavorable factors in this matter are the applicant's willful misrepresentations.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time

(b)(6)

Page 7

since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.