



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: CLEVELAND, OHIO

JUN 25 2013

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cleveland, Ohio. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the previous decision of the AAO will be affirmed. The waiver application remains denied.

The applicant is a native and citizen of the Philippines. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having presented a false passport to obtain entry into the United States. He is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 12, 2009. The AAO found that the applicant had failed to establish that a qualifying relative would experience extreme hardship and dismissed the appeal accordingly.

On motion, the applicant, through counsel, asserts that the AAO's decision was contrary to the law and all the facts of the case.

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: (1) 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 USCIS policy; and (2) 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).

On motion, counsel repeats the assertions made on appeal that the applicant did not misrepresent himself when he presented a false passport to enter the United States, and that the applicant has a medical condition and would experience extreme hardship upon relocation to the Philippines. Counsel further asserts that the AAO failed to discuss the presence of the qualifying relative's family in the United States.

The record includes the evidence previously submitted on appeal. On motion, the applicant has submitted the following additional documents: two medical documents pertaining to the applicant's diagnosis of carpal tunnel syndrome; background materials on carpal tunnel syndrome; country conditions materials, including a human rights report and International Monetary Fund report; copies of unpublished AAO decisions and sections of the Foreign Affairs Manual.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (i) 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 chapter is inadmissible.

Counsel's assertions that the applicant is not inadmissible for misrepresentation despite having presented a false passport to enter the United States is contrary to the plain meaning of section 212(a)(6)(C)(i) of the Act.

To support his contention that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, counsel has submitted two unpublished AAO decisions and a reference to the Foreign Affairs Manual. AAO decisions are individual adjudications and do not constitute precedent decisions unless designated as such under regulation. *See* 8 C.F.R. § 103.3(c). In any event, neither AAO decision submitted by counsel is relevant to the facts in this proceeding. In the first case cited by counsel the applicant entered without inspection as opposed to using a false passport to gain entry as in this case, and the AAO concluded that the name used by the applicant was not relevant to establishing eligibility for a Form I-130. In the second case, the applicant was found to have misrepresented his intent in applying for a temporary visa, not using a false passport to gain entry into the United States, as in this case. In that case, the AAO found that the record did not contain sufficient evidence that the applicant had misrepresented his intent upon entry into the United States with a temporary visa.

The facts of this case are clear. The applicant did not have a visa to enter the United States under his true name, and used a false passport to misrepresent his identity in order to obtain a visa. He then used the falsely obtained entry documents to enter the United States. As noted in the previous AAO decision, it is the applicant's burden to establish admissibility. The applicant has provided no explanation as to why he did not obtain a passport and visa in his real name, or evidence that had he applied for a visa under his real name that a visa would have been issued. The AAO finds that by presenting a passport and visa in a name other than his own when applying for admission to the United States he cut off a line of inquiry that would have established that he did not possess a valid visa in his real name. This is a material misrepresentation.

On motion, counsel has not submitted any evidence establishing that the AAO did not apply the law correctly in this case, nor has counsel submitted any legal authority which suggests that an alien's true identity is not material to his or her admission into the United States. The AAO affirms that the applicant is inadmissible for misrepresentation, section 212(a)(6)(C)(i) of the Act.

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

- (1) 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. 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. 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.

Counsel asserts on motion that deportation itself is extreme hardship, and that any other position is subjective and without a basis in reality. The AAO does not find this persuasive. The statutes, regulations and guiding legal precedents discussed above are the standards applicable to this proceeding. While counsel infers that simply having to separate from family members constitutes extreme hardship, current legal precedent does not support this position, and in prior paragraphs the AAO has cited to cases which hold that severing family or community ties is a common result of inadmissibility.

With regard to extreme hardship, counsel asserts the AAO did not discuss the impact on the applicant’s spouse regarding the presence of family members in the United States, and refers to a previously submitted brief. In the brief referenced by counsel, the AAO notes that counsel discussed selected hardship factors from *Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999), and states “The applicant’s most significant qualifying relative is his U.S. citizen spouse” and “as far as other qualifying relatives and conditions in the country to which qualifying relatives might have to relocate, we attach the following:” followed by copies of naturalization documents for the applicant’s spouse’s relatives. The brief cited to by counsel does not specifically articulate the extent of the emotional hardship that the applicant’s spouse would experience if she were to relocate to the Philippines and be separated from her family members in the United States.

The naturalization documents of the applicant’s spouse’s family members were previously submitted, however the AAO does not find these documents to establish a distinction between the impact on the applicant’s spouse and what is commonly experienced by relatives of inadmissible aliens who relocate with their spouses. See *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)(holding

that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute an extreme hardship).

Counsel repeats assertions that the applicant and his family would not be able to find employment in the Philippines, and that the conditions there would result in extreme hardship upon relocation. In its prior decision, the AAO discussed the applicant's assertions of hardship due to relocation to the Philippines, and did not find them to be persuasive. Although counsel has submitted additional country conditions materials on motion, they are general in nature and fail to establish that the applicant or his spouse would fall into the statistics of unemployed or victims of terrorism or targets of crime. The AAO finds no basis to disturb its original conclusions on this matter.

Counsel repeats assertions that the applicant has a serious medical condition which will impact his family members. As discussed above, hardship to the applicant is only relevant to the extent that it impacts a qualifying relative. The record contains a patient visitation report and a prescription notice which diagnoses the applicant with carpal tunnel syndrome. Both are dated November 20, 2006. The documents state that the applicant must wear wrist support, take ibuprofen and follow up as needed. This evidence indicates that the applicant has been treated for carpal tunnel syndrome in the past, but it does not indicate that the condition continues, or that his condition impacts the applicant's ability to function on a daily basis. Without further, more recent, documentation the AAO cannot determine that the applicant's spouse, while residing in the United States, would experience any hardship due to the applicant's medical condition.

Based on these observations, the AAO does not find that the assertions and evidence submitted on motion change the analysis of extreme hardship to the applicant's spouse in our prior decision. A review of the evidence in the record, and an examination of the established facts in this case, do not indicate that the applicant's spouse will experience hardship rising to the level of extreme hardship, either upon relocation or separation. Having found the applicant remains statutorily ineligible for relief on motion, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the application remains denied.