



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **MAR 08 2013**

OFFICE: ROME, ITALY

FILE: [REDACTED]

IN RE: [REDACTED]

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:

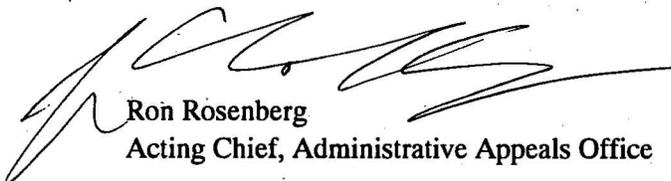
SELF-REPRESENTED

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, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador and a resident of Italy who was found to be inadmissible to the United States pursuant to 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 sought to procure admission to the United States through willful misrepresentation. The applicant is the husband of a U.S. lawful permanent resident and is the derivative beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to reside with his lawful permanent resident wife.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his lawful permanent resident wife, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director*, dated July 3, 2012.

On appeal, the applicant submits a brief, a hardship statement from the applicant's wife, medical records for the applicant's wife and an academic record for the applicant's child. The record also includes, but is not limited to: prior hardship statements from the applicant and his wife, financial records, school records for the applicant's children, articles on country conditions in Italy and Ecuador and medical records for the applicant's wife.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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, in pertinent part:

The [Secretary 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 immigrant 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 applicant admitted that in order to procure admission into the United States in 1996, he misrepresented the purpose of his trip to obtain a B-1 visitor's visa when he actually intended to come to the United States to work. *Record of Sworn Statement*, dated December 22, 1996. The applicant is consequently inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through willful misrepresentation of a material fact.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. lawful permanent resident wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals 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 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 record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s qualifying relative.

The record does not establish that the applicant’s spouse would experience extreme hardship in the event of separation from the applicant. Regarding financial hardship, the applicant claims that his wife is unable to work and that he sends money from Italy to support his family. The record includes receipts establishing that the applicant has sent money from Italy to his wife in the United States. However, the record does not include tax returns or any other documents showing the sources of the family’s income. While the record does show that the applicant’s wife is receiving psychological treatment, the record does not include supporting documentation demonstrating that she is unable to work in the United States. The record includes a letter from the applicant’s children’s school district stating that the children are eligible for the free lunch program. However, the record does not include any documents establishing financial eligibility for this program, in particular, or the family’s income, in general.

Regarding emotional hardship, medical records establish that the applicant’s wife has received psychological treatment, counseling and/or prescription medication since June 2008 when she was diagnosed with Post-Traumatic Stress Disorder, Severe Depressive Disorder, Panic Disorder and Agoraphobia after the accidental death of her brother in October 2005. The applicant’s wife has been treated for mental illness since June 2008, nearly four years before this waiver application

was denied, which indicates that the applicant's inadmissibility did not cause her pre-existing conditions. The applicant's wife discusses her condition in her statement, but does not discuss the impact of separation from the applicant on her mental health. The applicant's current psychologist recommends that the applicant's wife be reunited with the applicant but also does not discuss the impact of separation on the applicant's wife mental health. The record contains letters from the applicant's children's teachers stating that the children are displaying symptoms of sadness and would be better off reunited with the applicant. However, the record does not show how the emotional distress of the applicant's children has impacted the applicant's wife, the qualifying relative. The present record does not establish that separation from the applicant has significantly aggravated her preexisting mental health conditions.

The record does not contain sufficient evidence to establish that the financial and emotional difficulties facing the applicant's wife have risen to the level of extreme hardship during her separation from the applicant.

The record also does not establish that the applicant's spouse would experience extreme hardship if she were to relocate to her former residence of 10 years in Italy or her native Ecuador with the applicant. The record indicates that the applicant's wife has resided in the United States since January 2012 and previously resided with her children and the applicant in Italy. Regarding emotional hardship, the applicant expresses concern about his children's lack of educational opportunities in Italy or Ecuador. The applicant further expresses that because his children are doing well in school in the United States, they are more likely to receive scholarships in the United States as compared to Italy or Ecuador. While academic records for his children show that they are doing well in school, the evidence does not demonstrate that any difficulties his children would face in re-adjusting to school in Italy or adjusting to school in Ecuador would cause the applicant's wife to suffer extreme emotional hardship. The applicant's wife also worries that her children will suffer outside of the United States without living in close proximity to their aunts, uncles and cousins. However, the record does not establish that her children will suffer emotional difficulties upon relocation that would cause the applicant's wife, the qualifying relative, to suffer extreme hardship.

Regarding financial hardship upon relocation, the applicant's wife is concerned about the social and economic conditions in Ecuador and Italy. While the record contains articles regarding difficult economic conditions in Ecuador and Italy, the record also shows that the applicant is sending money from Italy to the United States to support his family because the applicant's wife is not employed. The record does not contain tax returns for the family or any other documents showing total income and total expenses, which would indicate financial hardship upon relocation to Italy or Ecuador. While economic conditions in Italy or Ecuador may be difficult, the record does not contain employment or business records for the applicant sufficient to show that his wife would face financial hardship upon relocation. The evidence, in the aggregate, does not establish that the applicant's wife would suffer extreme financial hardship in the event of relocation to Italy or Ecuador.

The applicant has failed to establish extreme hardship to his qualifying relative as required for a waiver of his inadmissibility under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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 appeal is dismissed.