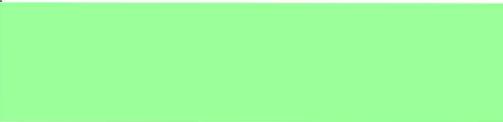


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: **MAR 09 2013** OFFICE: SEATTLE, WASHINGTON

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.

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,

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

The record reflects the applicant is a native and citizen of Cambodia 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 procured a visa to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The Field Office Director concluded the applicant failed to establish 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 September 4, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) failed to consider all of the evidence and pertinent facts by: incorrectly identifying the applicant's U.S. citizen spouse; subjecting the applicant and her spouse to a "very harsh marriage fraud investigation"; requiring an unreasonable burden of proof demonstrating the applicant's spouse's family's experience during the genocide committed by the [REDACTED] failing to explain the reasons why the applicant's spouse's testimony is not credible; and ignoring psychological evidence submitted into the record. Notice of Appeal or Motion (Form I-290B), dated September 27, 2012.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support; identity, psychological, employment, and financial documents; photographs; and documents on conditions in Cambodia. 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) 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 Act is inadmissible.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having procured a B-1 nonimmigrant visa by indicating during the application process that she was married, when in fact, she was not.<sup>1</sup> The record supports the finding, and the AAO concurs the misrepresentation was material. The AAO finds the applicant is inadmissible under 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 [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.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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 (BIA) 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 BIA 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 BIA 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,

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<sup>1</sup> The record reflects the applicant procured admission to the United States upon presenting the fraudulently obtained B-1 visa on May 30, 2001, with permission to remain until June 29, 2001. The record further reflects the applicant did not timely depart and has remained in the United States to date.

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 *Id.* at 568; *In re 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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 contends the applicant's spouse would suffer extreme emotional and psychological hardship in the applicant's absence as he has been vested in a positive outcome of the applicant's waiver application, and he has met several times with his therapist as his psychological state remains fragile. The applicant's spouse also discusses: his relationship with his ex-wife; his courtship with the applicant; and the stress he and the applicant have felt because of the applicant's "lack" of an immigration status. The applicant's spouse further discusses the additional stress he has suffered as the sole breadwinner.

Although the applicant's spouse may experience hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish

initially diagnosed the applicant's spouse with Adjustment Disorder with Depressed Mood, and recommended that he seek individual therapy to learn of ways to cope with his current stressors and to prevent further deterioration of his mental health. *See Psychological Evaluation*, dated September 27, 2011. However, the AAO notes the record indicates the applicant's spouse has not pursued any ongoing treatment for his mental health condition, indicating the applicant's presence would be advantageous in such treatment until a similar diagnosis and recommendation by Ms. occurred on October 28, 2012. *See Subsequent Psychological Evaluation*. Accordingly, the AAO cannot conclude the applicant's spouse's emotional and psychological hardship would go beyond the normal consequences of inadmissibility.

Additionally, the AAO notes the applicant's spouse is the primary breadwinner. However, the record does not include any evidence of his financial obligations and his inability to meet those obligations in the applicant's absence other than what has been self-reported. Accordingly, the AAO cannot conclude the record establishes the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's hardship, but finds even when this hardship is considered in the aggregate, the record fails to establish he would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Cambodia to be with the applicant as: he would leave his life in the United States, which includes his stepmother and siblings, out of fidelity to the applicant, with whom he has invested his happiness; he maintains strong family ties and relationships "forged in the crucible of the killing fields" as he and the applicant spend their weekends with his stepmother, the family matriarch, as well as with his brothers and their families; he does not have family members or a social network on which to rely in Cambodia; employment prospects and earning potential are "a pittance" in comparison to what he earns as a machine operator in the United States; as a 48-year-old man, he would be at a distinct disadvantage in competing with younger workers as there has been a shift in worker demographics, and he and the applicant do not have the meaningful skills to compete with younger workers; and his survival would be in jeopardy as the poverty rate is so high. The applicant's spouse further discusses: his relationship with his stepmother and the frequency and activities of his family gatherings; his family's experiences in Cambodia under the the circumstances of his niece living with him and the applicant; that he only earned the equivalent of \$40/month as a high school teacher in Cambodia; that the government no longer provides housing, employment, and healthcare; that he fears it would be difficult to find affordable housing, and that he does not want to be a financial burden to his family, even though they would offer to help; and that the applicant does not have much of a relationship with her family.

The record is sufficient to establish the applicant's spouse would suffer hardship if he were to relocate to Cambodia. The record reflects he maintains close familial and community ties as well as steady employment in the United States and does not maintain ties to Cambodia. And, although the record includes current employment and labor conditions in Cambodia indicating the applicant's

spouse does not possess the defining characteristics of a vulnerable population group as he is an educated male with a history of steady work experience in the field of education,<sup>2</sup> the AAO finds that, in the aggregate, the applicant's spouse would suffer extreme hardship as a result of relocation to Cambodia to be with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required 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 the applicant merits a waiver as a matter of discretion.

In proceedings for application for 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.

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<sup>2</sup> See National Institute of Statistics, Ministry of Planning Cambodia, *Labour and Social Trends in Cambodia 2010* (July 2010).