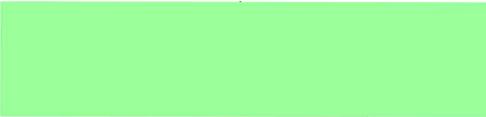


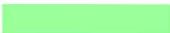


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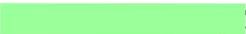


Date: **MAR 21 2013**

Office: CHICAGO

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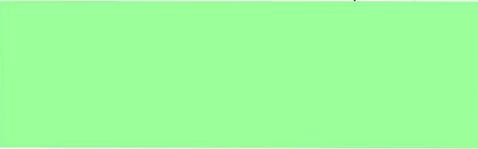
IN RE:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record establishes that the applicant is a native of the former Yugoslavia and citizen of Slovenia 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 admission to the United States through fraud or willful misrepresentation. The record shows that the applicant misrepresented himself as a visitor upon entry into the United States under the Visa Waiver Program when he was in fact, as determined from his sworn statement at an interview for adjustment of status, an intending immigrant. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 25, 2009.

In appealing the denial counsel asserts the applicant had not admitted to procuring admission through willfully misrepresenting a material fact, but rather his statement at his interview for adjustment of status was poorly translated by his interpreter. Counsel further asserts that denying the waiver request would result in extreme hardship to the applicant's spouse.

On appeal, the AAO found that the record established that the applicant was an intending immigrant when he sought nonimmigrant admission to the United States and that counsel had submitted no evidence in support of his claim that would overcome the applicant's sworn statement that at the time he entered the United States he had no intention of returning to Slovenia. Regarding hardship to a qualifying relative the AAO determined that the applicant had shown that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility. However, the AAO concluded that the applicant had not established that his spouse would experience extreme hardship should she remain in the United States while the applicant resided abroad due to his inadmissibility. The appeal was dismissed. *Decision of the AAO*, dated November 9, 2011.

On motion counsel for the applicant submits a brief; a statement from the applicant's spouse; medical documentation for the applicant's spouse; letters of support from family and friends of the applicant; and financial documentation. The entire record was reviewed and considered in rendering this decision.

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:

- (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. . .

Counsel contends the applicant had not willfully tried to deceive immigration officials when he entered the United States and money he brought was for medical expenses incurred by a former brother-in-law. Counsel also submits a statement from the applicant's former brother-in-law that the applicant came to the United States with money to help his family while he was recovering from injuries. However, counsel has not submitted evidence that overcomes the applicant's earlier statement that when initially entering the United States he had brought money for living expenses and to possibly start a business, and had subsequently sold his business in Slovenia before returning to the United States with the intention to remain. The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission through fraud or 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. Hardship to the applicant can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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 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.

As noted, the AAO determined that extreme hardship had been established were the applicant's spouse to relocate abroad to reside with the applicant due to his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, however, the AAO concluded that the applicant had failed to establish his spouse would experience extreme hardship should she remain in the United States while the applicant resides abroad.

The AAO determined that the record did not contain documentation to establish the spouse's mental health or the nature and severity of emotional hardship, or to demonstrate how separation would affect her ability to meet her daily responsibilities. The AAO found financial documentation submitted by the applicant did not demonstrate that the applicant's spouse would experience financial hardship upon separation from the applicant. The AAO found no proof of income or evidence that the spouse had taken loans to cover bills, that she was financially dependent on the applicant, or that her adult children could not assist her.

On motion counsel asserts the applicant's spouse has ongoing health concerns and mental anguish over the possibility of separation from the applicant. Counsel states the spouse's mental anguish has caused weight loss and vomiting. Counsel contends the spouse has chronic pain from two accidents, one to a toe and one to her pelvis, and counsel further asserts the spouse will be devastated by the loss of the applicant's income.

In her letter the applicant's spouse states that she and the applicant had difficult lives before meeting and they heal each other's pain. She states she is depressed, losing hair and cannot sleep. She also states that the applicant's son has grown up in the United States, knowing little about Slovenia, and they need to be together as a family.

The AAO finds that the record does not establish the applicant's spouse would experience extreme hardship if she were to remain in the United States while the applicant resides abroad due to his inadmissibility. Counsel and the applicant's spouse assert she experiences anxiety because of possible separation from the applicant. The applicant failed, however, to provide any detail or supporting evidence explaining the exact nature of the qualifying spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. The assertions made by counsel and the applicant's spouse regarding her emotional hardships have been considered, however, cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel submitted medical documentation dated in 2001 and 2006 for the applicant's spouse, but submitted no updated documentation to establish that the applicant spouse continues to suffer health problems stemming from injuries that occurred in 2001 and 2006 or that her treatment and recovery require the applicant's presence in the United States.

With respect to the applicant's spouse's financial hardship counsel states the applicant's spouse will be devastated without the applicant's income. In her statement on motion the spouse only references financially struggling as a single mother when her children were young, but provides no explanation of her current financial situation. On motion counsel submits a 2010 tax return and W2s, a lease agreement from 2009, and utility bills from 2011. Also submitted were credit card statements from 2011 with some in the applicant's name and some in the spouse's name.

The record also contains loan information in the spouse's name from 2008 and 2009, but no updated documentation to establish the current status, and a 2008 workers' compensation settlement where the spouse received \$6,000. Without context or explanation the AAO is unable to conclude the severity of the spouse's financial situation. Further, it has not been established that the spouse's children or other family members are unable to assist her as the record shows they had in the past. The AAO recognizes that the applicant's spouse will endure some financial hardship as a result of separation from the applicant, however, based on the record her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

It has also not been established that the applicant is unable to support himself while in Slovenia or assist his spouse from there, thereby ameliorating the hardships to the spouse, particularly since applicant had sold a business when coming the United States, and had testified to having brought a substantial amount of money at the time.

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 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application remains denied.

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Page 7

ORDER: The motion to reopen is granted, and the prior decisions affirmed. The waiver application remains denied