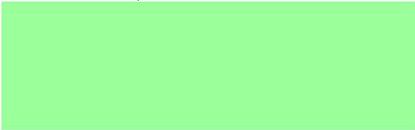




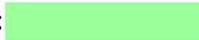
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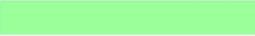


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Office: TAMPA, FL

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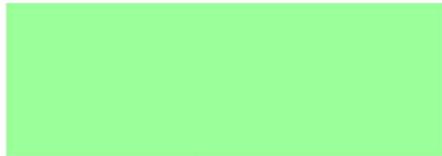
IN RE:

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

The applicant is a native and a citizen of Macedonia 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 27, 2012.

On appeal, counsel for the applicant asserts that the applicant did not willfully omit any material fact and is not inadmissible for misrepresentation, and that the record also contains sufficient evidence to demonstrate the applicant's spouse will experience extreme hardship. *Form I-290B*, received July 27, 2012.

The record contains, but is not limited to, the following documentation: a brief from counsel for the applicant; statements from the Church of Scientology program located in Clearwater, Florida; background materials on the Church of Scientology and its religious practices; country conditions materials; statements from friends and family members of the applicant and her spouse; bank statements, tax returns and an employment letter for the applicant's spouse; and photographs of the applicant, her spouse and their family. 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.

The record indicates that the applicant entered the United States on June 1, 2011, and married her spouse 23 days later on June 23, 2011. The applicant was found by the Field Office Director to be inadmissible pursuant to section 212(a)(6)(C) of the Act for misrepresenting her intent to take up residence in the United States.

Counsel asserts on appeal that the applicant made no willful misrepresentation when entering the United States in June 2011, and that she did not intend to marry her spouse when she entered and thus did not omit any material fact when interviewed upon entry. *Brief in Support of Appeal*, received August 24, 2012.

Although the AAO is not bound by the Foreign Affairs Manual, reference to its provisions is informative in responding to counsel's assertions.

9 FAM 40.63 N4.2 states:

In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).

The Department of State has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." 9 FAM 40.63 N4.7-1(3).

If conduct occurs within 30 days of entry to the United States a presumption of misrepresentation arises. 9 FAM 40.63 N4.7-2. If conduct occurs within 60 days of entry a presumption of misrepresentation does not arise, but may be established based on facts leading to a reasonable belief that the applicant misrepresented his or her intent. 9 FAM 40.63 N4.7-3. Here, the applicant entered the United States and married her spouse 23 days later, and as such, a reasonable presumption of misrepresentation arises.

Counsel specifically asserts on appeal that the applicant did not intend to married her spouse but did so after her authorized period of stay was limited to 30 days, which, he states, was insufficient to complete her religious studies.

In this case, both the applicant and her spouse have stated that they fell in love during a previous six month stay and both considered their relationship significant. *Affidavit of the Applicant's Spouse*, dated January 18, 2012; *Affidavit of the Applicant*, dated January 18, 2012. The record contains a letter from her church in Miami and Clearwater, Florida, further obscuring whether the applicant intended to get married or move to Miami to study at a different church, despite the fact that she had already married her spouse within 23 days of re-entering the United States. In fact, in one statement, dated January 18, 2012, [REDACTED] of the Church of Scientology Tampa Foundation, states:

Due to having been given only one month to stay in the country upon her entry, she was not able to stay in the country upon her entry, she was not able to complete her training in time, as this is insufficient for the amount of study on her program. [Applicant] sought help from the Church to discover any possibility of extending her visa. Because [applicant] was seeking extension of a tourist visa the Church could not aid her, as the Church only aids in the processes for Religious visas.

I therefore extended a welcome for her to train temporarily at our church in Tampa, Florida until such time as she handled this issue so that she could study and continue her training with no distractions or encumbrances.

This statement indicates that the applicant went to the church for help, but that the church could not help her so the church invited to study there. Then the applicant married her spouse.

The affidavit of the applicant's spouse states "[a]round April 2010, I asked [applicant] to be my girlfriend. She accepted . . ." *Statement of the Applicant's Spouse*, dated January 18, 2012. While this statement may not establish that the applicant and her spouse were engaged to be married per se, it is an indicator that they both considered their relationship to be significant. This is evidenced by the fact that they did actually get married 23 days later. The AAO notes that, based on statements by the Church of Scientology, they too were aware of the significance of the relationship between the applicant and her U.S. citizen spouse, as the applicant and her spouse were introduced by the church, invited to the United States by the church and then offered employment or study at the church despite the applicant's expiring period of stay.

The applicant states further that it was after the applicant was told she had to leave in 30 days that her spouse began to consider marrying her and he states "[t]he last six months were great," again referencing the significance of the their relationship and/or inferring that the decision to marry may have been for the purpose of avoiding immigration consequences. *Statement of the Applicant's Spouse*, paras. 21, 22, dated January 18, 2012.

The record indicates that the applicant and her spouse had a significant relationship prior to her attempted return on June 1, 2011. The AAO does not find reasonable support for the possibility that the applicant failed to consider she would not be re-admitted, or that she would not continue with her previous relationship. Further, the evidence submitted to support counsel's assertions raises the question of whether the applicant's decision to marry was formed for the purpose of avoiding immigration consequences. If a marriage is entered into for the purpose of avoiding immigration consequences, then USCIS may move to revoke the I-130 petition filed by the applicant's spouse on her behalf.

When the evidence in this case is examined in its totality, however, the AAO finds the former to be the more likely of the two scenarios. As such, the AAO concludes that the evidence submitted by the applicant fails to rebut the reasonable presumption that the applicant misrepresented her intent to take up residence in the United States. As such, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. She requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or any 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-Moralez*, 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 that the Field Office Director improperly relied on various precedent cases cited in the decision, and states that the facts of this case are different than those which were cited. The cases cited by the Field Office Director were not cited based on their fact patterns, but based on the guidance they provided for establishing the extreme hardship standard. In this case the Field Office Director’s reliance on precedent cases discussing the extreme hardship standard was proper.

Counsel asserts that the applicant would experience emotional and physical hardship upon relocation to Macedonia. *Affidavit of the Applicant’s Spouse*, dated January 18, 2012. Counsel asserts that the applicant does not speak fluent Macedonian and would not be able to continue practicing his religion if he relocated to Macedonia because it requires two people who speak the same language fluently to practice.

Counsel has submitted a number of background articles discussing the Church of Scientology and its religious practices. These materials, however, do not establish that the applicant would not be able to practice his religion in Macedonia, or that the religion requires adherents to be fluent in any particular language. Counsel also improperly conflates “working” with the Church and “practicing his religion” when asserting that he must be fluent in order to practice scientology in Macedonia. The fact that the Church of Scientology has missionaries in Macedonia, and in fact employed the applicant as a missionary there, is inconsistent with counsel’s assertion that her spouse would not be able to practice his religion. Regardless of these assertions, specific arguments over how this church practices their religion is not relevant. There are no country conditions indicating that choice of religion is restricted in Macedonia, or that this particular church is targeted by the state or faces any

greater discrimination than other religions in the state or even that the applicant's spouse would be unable to find the human resources necessary to practice his religion. Even if the record supported these assertions, the fact that the applicant's spouse does not speak Macedonian and would have to become fluent before finding employment or practicing his religion does not distinguish the impact on him from the common impacts associated with the relocation of a family member of an inadmissible alien.

Counsel briefly asserts that the applicant's spouse's mother now depends on him financially and refers to her statement and other statements in the record as support. While the AAO acknowledges these statements, it notes that such statements are not sufficient evidence. There are no tax records claiming his mother as a dependent, bills paid on her behalf, proof of joint residence or any other evidence that he is supporting his mother financially, or that the applicant's presence or absence would somehow impact his ability to provide for her.

Counsel asserts that the applicant's child would experience a range of hardships due to separation or return to Macedonia with the applicant. As discussed above, children are not qualifying relatives in this proceeding, as such, any hardship to them is only relevant to the extent that it impacts the qualifying relative. In this case, the record does not contain any documentation indicating that the impact on the applicant's child would be uncommon, or that it would result in an uncommon hardship on the applicant's spouse. As such, the AAO does not find the record to adequately support counsel's assertions.

Even when the hardships asserted upon relocation are considered in the aggregate, the AAO does not find the record to establish that a qualifying relative would experience extreme hardship upon relocation.

With regard to hardship upon separation, counsel asserts that the applicant's spouse will suffer a heightened psychological hardship because of his religion's practices.

The record contains a number of affidavits from friends and family members of the applicant and her spouse attesting to their love and her moral character, but these are insufficient to establish that the psychological hardship of separation on the applicant's spouse in this case is distinct from that which is commonly experienced. When the facts of the case are examined as a whole, the AAO notes that the applicant and her spouse have been married for a relatively short duration, a factor that weighs against a determination that the psychological hardship involved in separation here is uncommon.

As discussed above, counsel for the applicant asserts the applicant's mother will experience financial hardship due to the applicant's inadmissibility. However, the basis of hardship to her has not been clearly articulated and has not been supported by sufficient documentation.

Even when the hardship factors asserted upon separation are considered in the aggregate, the AAO does not find the record to establish that they rise above the common impacts of separation to a degree of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 she 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 appeal is dismissed.