



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **MAY 10 2013**

Office: CHICAGO

FILE: [REDACTED]

IN RE: Applicant: [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:

[REDACTED]

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,

Perry Rhew

Perry Rhew
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 applicant is a native and citizen of Ukraine 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 procuring admission to the United States through fraud or misrepresentation. The applicant entered the United States on December 22, 1998 with a B-1 business visitor visa to attend meetings at the ██████████ New York; however, the applicant never attended these meetings, and proceeded directly to ██████████ Illinois after entering the United States. The applicant does not contest this finding of inadmissibility, but rather applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. Citizen spouse.

In a decision dated March 3, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director, March 3, 2010.*

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO, dated September 13, 2012.* Consequently, the appeal was dismissed. *Id.*

The record contains the following documentation: a statement by the applicant's attorney submitted with the Form I-290B, Notice of Appeal or Motion; financial documentation; psychological documentation for the applicant's spouse; country conditions information on Ukraine; and documentation submitted with the applicant's Form I-601 and initial Form I-290B. 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) 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:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's U.S. citizen wife 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.

On motion to reopen, counsel contends that the applicant’s spouse is suffering from emotional hardship, that the applicant’s spouse feels helpless and depressed, that her mental health is shattered, and that she has been advised to start a course of psychotropic medication to manage her depression and anxiety symptoms. In support of this contention, counsel submitted a copy of a psychological evaluation of the applicant’s spouse conducted by [REDACTED] which was previously in the record, a more recent psychological evaluation, and evidence that the State of Illinois clinical social worker license of [REDACTED] is valid. There are two evaluations by [REDACTED] in the record, one dated September 3, 2009 and the other dated September 11, 2012. The evaluations describe the applicant’s spouse’s fears that she might be separated from the applicant and the financial and other difficulties that she would have if the applicant were to relocate to Ukraine as well as conditions in Ukraine, but provide few details regarding the applicant’s spouse’s current psychological condition, prescribed treatment, and prognosis.

Counsel also submitted a psychiatric evaluation of the applicant’s spouse conducted by Dr. [REDACTED] dated May 11, 2010, which gives a diagnosis of Major Depressive Disorder, and recommends medication and individual psychotherapy. The record also includes notes from the applicant’s spouse’s two visits with Dr. [REDACTED] dated June 15, 2010 and January 12, 2012. The notes are largely illegible, provide little detail, and do not clearly explain the applicant’s spouse’s current condition. The notes from the January 12, 2012 visit indicate that the applicant’s spouse missed a prior appointment because she thought that she was better and did not need to see the doctor. Counsel further submitted a translation of a consultative certificate issued by Dr. [REDACTED] in Ukraine on September 14, 2012. The certificate states that the applicant’s spouse was diagnosed with astheno-depressive neurosis with anxiety, and recommends a psychiatrist’s supervision at the place of residence and medication. The certificate provides no

detailed explanation from the psychiatrist of the applicant's spouse's condition, nor any information on the prognosis for her condition.

The record indicates that the applicant's spouse has been evaluated and treated for symptoms of depression and anxiety, and that she was recommended for psychotherapy and medication. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's spouse's condition is so serious that it is interfering with her ability to carry out her daily activities or otherwise amounts to hardship beyond the common results of inadmissibility of a loved one. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Counsel also contends that the applicant's spouse will suffer financial hardship if the applicant's waiver application is denied. In addition to the financial documentation previously in the record counsel submitted a copy of the applicant's 2011 federal income tax return, which indicates that the applicant's spouse continues her employment as a dental technician. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence. 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).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's wife is facing as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In regard to relocation, the AAO previously found that the applicant's spouse is originally from Ukraine, the record did not support counsel's contention that the applicant's spouse would not be allowed to stay in Ukraine for significant periods of time, and the record did not support counsel's contention that the applicant's wife was at risk due to crime if she relocates to Ukraine. On motion counsel submitted country conditions information on Ukraine. However, the evidence submitted is generalized information, including human rights practices and crime statistics. There is no indication in the record that the applicant's spouse would be at any specific risk in Ukraine. The applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Ukraine to reside with the applicant.

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 U.S. citizen 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

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 application remains denied.

ORDER: The motion to reopen is granted and the waiver application remains denied.