

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
20 Massachusetts Avenue NW  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAY 14 2013**

Office: LAS VEGAS

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Armenia 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated September 27, 2012.

On appeal, counsel for the applicant asserts that the applicant did not misrepresent his purpose for coming to the United States. Counsel alleges that the applicant's application for an F-1 visa was truthful and that his plans to attend [REDACTED] were interrupted by circumstances beyond his control. Additionally, counsel contends that the applicant did not have an interpreter during his first adjustment of status interview, so he had difficulty understanding the officer's questions about his purpose for coming to the United States and was unable to explain his situation fully. Counsel also alleges that the qualifying spouse will suffer extreme hardship if the waiver application is denied.

The record includes, but is not limited to: a psychological evaluation regarding the qualifying spouse; statements from the applicant and the qualifying spouse; a letter from the applicant's father; a letter from the person who had agreed to sponsor the applicant's university education; letters of support from friends; the original receipt for the applicant's airline ticket from Armenia to [REDACTED] a typed itinerary for a flight from [REDACTED] a letter from a family therapist regarding the qualifying spouse; and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that the applicant entered the United States at the [REDACTED] on January 30, 2003. He presented a student visa and informed the immigration officer that he planned to attend [REDACTED]. Officials at the university later informed USCIS that the applicant never reported to school. During an interview on January 9, 2012, the applicant testified under oath that he traveled to the United States to see his father in [REDACTED]. During a second interview on May 30, 2012, the applicant again stated that he never attended [REDACTED] and that he had come to the United States to see his father.

On appeal, the applicant alleges that he intended to study at [REDACTED] but was unable to do so due to circumstances out of his control. He explains that his father bought his plane ticket from Armenia to [REDACTED] and had also arranged for him to fly from [REDACTED] to [REDACTED] three days later. However, according to the applicant, when he arrived in [REDACTED] his father informed him that his sponsor could no longer afford to pay his tuition at the university. The applicant contends that he had trouble explaining this situation to the immigration officer during his first interview because he did not have an interpreter. He also asserts that when the immigration officer asked whether his goal in coming to the United States was to visit his father in [REDACTED], he answered “yes” despite not understanding the word “goal.”

The AAO finds that the applicant has failed to show that the finding of inadmissibility was erroneous. Although the applicant claims that he did not understand some of the questions during his January 9, 2012 interview and struggled to explain himself, the transcript of that interview does not support his claim. The transcript indicates that the applicant informed the officer that he understood what was being said and that he was willing to answer questions. When asked, “What was your intention upon entering the United States?” the applicant replied, “To see my father.” When asked whether he ever traveled to [REDACTED] to attend school, the applicant replied, “No.” There is no indication that the applicant attempted to provide additional information in order to explain his failure to go to [REDACTED]. Additionally, while he claims that he did not understand the question when the officer asked what his goal was in traveling to the United States, the transcript does not state that the officer used the word “goal” or asked any similar questions. The transcript also bears the applicant’s signature on each page, which demonstrates that he agreed with its contents at the time of the interview.

Additionally, the evidence the applicant has submitted is insufficient to prove that he did not misrepresent his purpose for coming to the United States. Although letters from his father and friends indicate that the applicant had planned to attend the [REDACTED], other evidence shows that he began living with his father when he arrived in [REDACTED] and that he

did not have arrangements to travel to [REDACTED]. Although he claims to have submitted a copy of the receipt for his airline ticket to [REDACTED] that document bears no signature, company logo or letterhead, unlike the receipt for the applicant's ticket from Armenia to [REDACTED] which is printed on company letterhead and is addressed to the same travel agency (Armenia Travel). The AAO therefore finds that the applicant has failed to show that he is not inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

Section 212(i) of the Act provides:

- (1) The [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.

According to section 212(i) of the Act, 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. 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 (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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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 qualifying spouse states that she has been under extreme stress due to the applicant’s immigration situation and that her mental health will deteriorate if the waiver application is denied. She alleges that following the applicant’s immigration interview in January 2012, she began “experiencing anxiety attacks and [is] always under stress, suffering from headaches, bad cramps in [her] arms, fingers numbing.” She asserts that she cannot live without the applicant. The qualifying spouse also asserts that she will experience financial hardship if the applicant is removed. She states that following the applicant’s interview, she was fired from her job because she was so depressed that she could not concentrate at work. She was also laid off from another job on June 7, 2012 after fearing that she would be fired due to an inability to complete basic

tasks. She now collects unemployment benefits and states that her expenses exceed her monthly income.

Additionally, the qualifying spouse asserts that she would be unable to join the applicant in Armenia. She explains that she shares custody of her minor son with her ex-husband and that she would be unable to take her son to Armenia. She also notes that she has an adult son who lives in the United States and from whom she does not want to be separated. The qualifying spouse also claims that she has no close relatives in Armenia and that her mother lives in the United States.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were separated from the applicant. The psychological evaluation from [REDACTED] Ph.d., dated October 16, 2012, indicates that the qualifying spouse is experiencing severe depression and anxiety due to the risk that the applicant will be forced to return to Armenia and that she is at high risk of suicide. The evaluation states that the qualifying spouse is experiencing severe anger and symptoms of severe anxiety, including insomnia, nightmares, and other sleep-related problems, heart palpitations, feeling of choking, difficulty breathing, numbness, trembling, inability to relax, and other problems. Additionally, the evaluation notes that the qualifying spouse is suffering from severe depression with high levels of hopelessness and a significant risk of suicide. According to the evaluation, if the applicant is not permitted to reside in the United States, the qualifying spouse would likely experience “a sudden emergence of her depression and suicidality as her hopes are lost and she begins to despair.” The evaluation therefore recommends that the applicant be permitted to remain in the United States with the qualifying spouse, and that the qualifying spouse receive therapy and prescription medication to treat her depression and anxiety.

The evidence also demonstrates that the qualifying spouse would suffer financial hardship if she were to remain in the United States without the applicant. Documentation in the record confirms that the qualifying spouse has been receiving unemployment benefits since July 8, 2012 and that the applicant has steady employment. If the applicant were removed, the qualifying spouse would have no income other than her unemployment benefits and may struggle to find a new job in light of her mental health condition.

The AAO also finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Armenia with the applicant. A custody order in the record indicates that the applicant's spouse shares custody of her minor son with her ex-husband and is subject to a court order requiring her to maintain her son's residence in Nevada. Therefore, the qualifying spouse likely would be unable to take her son with her to Armenia and relocating without him could cause her to lose custody. Additionally, although the qualifying spouse is originally from Armenia, she has been a lawful permanent resident of the United States since 1999 and a naturalized citizen since 2003, so readjustment to life in Armenia could present additional hardships. Furthermore, the applicant's spouse appears to have no close ties to Armenia and that her only close family members are her mother and her sons, all of whom reside in the United

States. Finally, the psychological evaluation indicates that the stress of relocation and separation from her children would cause the qualifying spouse's depression and anxiety to worsen.

In the aggregate, because of the qualifying spouse's severe mental health conditions, family ties in the United States, financial difficulties, and long residence in the United States, we find that she would experience extreme hardship if the waiver application were denied. Therefore, the AAO finds that the applicant has established extreme hardship to his qualifying spouse as required by section 212(i) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied, the role the qualifying spouse has played as a stepfather to the qualifying spouse's son, the fact that the applicant has held steady employment in the United States, and the absence of any criminal record. The unfavorable factor is the applicant's having procured admission to the United States through fraud or misrepresentation.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.