

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**



DATE: **MAY 15 2013** Office: DETROIT 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Detroit, Michigan, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Macedonia (formerly Yugoslavia) 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 a visa and admission to the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility as the beneficiary of his son's approved immigrant petition in order to remain in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, October 12, 2012.

On appeal, counsel contends that the field office director erred in concluding the applicant had not established that his inadmissibility would result in extreme hardship to his lawful permanent resident wife, and offers new evidence in support of this claim. Counsel provides updated documentation including new hardship statements of the applicant and his wife; country condition information; an employment letter, tax return, and W-2; a neurological evaluation; and handwritten notations on two prescription pad pages. The record also includes, but is not limited to: support statements; birth and marriage certificates; prior statements by the applicant and his wife; and copies of a passport, immigrant visa (IV), and IV application. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

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 [...].

The record indicates that, in order to obtain an immigrant visa upon his mother's petition for him as the unmarried son of a lawful permanent resident, the applicant claimed on an IV application dated November 20, 1980 to be single, despite having married on September 14, 1979. He continued to misrepresent his marital status to a Consular Officer on February 24, 1981 in order to obtain a visa, and entered the United States on March 20, 1981 using the fraudulently obtained document. After the fraud was detected when he petitioned for his wife on June 9, 1982, he departed the country on or about August 24, 1982. When he was later placed in deportation proceedings, he failed to attend

his scheduled hearing in 1983, returned to the United States in 1996, and has not departed since that time.

A waiver of inadmissibility under section 212(i) 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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is a lawful permanent resident and the only qualifying relative in this case. If extreme hardship 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 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.

Regarding hardship from relocation, the applicant contends that returning to her native Macedonia would impose extreme hardship on his wife, but provides no documentation of the factual circumstances recounted in his wife's statement other than a neurological examination. The record reflects that she is 58 years old, has been a lawful permanent resident since June 2004, and has not worked since 2007 (according to her husband). The qualifying relative's claims to suffer from high blood pressure and rapid heartbeat, as well as deteriorating health in general, are not supported by the medical information about her on record, including a neurological evaluation, in which the examining doctor found her vital signs normal. *See Neurological Evaluation*, October 25, 2012. There is no indication whether she filled the prescription, made any follow-up appointments, or is receiving any treatment.¹ She claims to have lower back pain related to a 1989 car accident, but there is no evidence to substantiate these occurrences. Other than her two adult children,² the record reflects no significant ties of the applicant's wife to this country, while indicating that she and her husband have unspecified distant relatives in Macedonia.

The evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Macedonia. Country condition information indicates that Macedonia is a democracy with an improving economy. *See Macedonia—Country Specific Information*, U.S. Department of State (DOS), March 9, 2013. The DOS has issued no recent travel warnings for the country, and

¹ The applicant also provides what appear to be notes regarding his own medical condition, but this evidence is relevant only to the extent it shows the condition imposes hardship on the qualifying relative. The evidence on record is insufficient to establish, however, that the applicant suffers from any condition. The handwritten notes, barely legible, contain medical terminology, abbreviations that are not easily understood, and a list of medications. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or its impact on the applicant's wife.

² The record reflects the applicant's elder child was born in Yugoslavia on October 4, 1979, but is inconclusive regarding her current residence. The N-400 filed in 2006 lists Macedonia as her residence, but counsel claims the applicant has only distant relatives remaining there.

there is no evidence the applicant's wife has any conditions for which treatment is required or unavailable. There is no documentation establishing that she is receiving ongoing treatment. If she returns to her native country to avoid being separated from her husband due to his inadmissibility, the applicant's wife need not bring her adult children along. As she has not been employed since 2007, there is no indication that relocating would cause her to forfeit a job or future prospects. While not insensitive that such a move would disrupt her life, the evidence does not establish that it represents a hardship that rises to the level of "extreme."

Regarding separation, the applicant's wife contends that thoughts of losing her husband have caused her emotional and physical hardship. Based on the patient's reported symptoms including fatigue, insomnia, and poor concentration, a doctor found her to be experiencing depression and stress due to the applicant's immigration issues, prescribed anti-depressant medication, and recommended follow-up. *See Neurological Evaluation*. There is no indication she is receiving ongoing treatment or documentation supporting the claim that she receives medical insurance benefits through the applicant's employment that would be lost with his departure. The neurologist notes that she is able to carry out normal activities with generalized pain that she self-treats with nonprescription medication. The record contains letters from the qualifying relative's son and from her church indicating she has family and friends to offer support. There is no indication that she would be unable to travel abroad to visit her husband in order to lessen the impact of separation.

Regarding the financial hardship claim, the record reflects that the applicant's wife held a factory job until 2007, but the applicant provides no documentation of her employment or earnings history. Further, the record contains no evidence of the couple's debts or living expenses, and lacks documentation of their claimed mortgage or its amount. The financial record is limited to documentation suggesting the applicant has worked for the same employer for 16 years, earning nearly \$33,000 in 2011. The AAO is unable to assess the impact of the applicant's departure without evidence of his wife's past earnings contributions, as they bear on future earning capacity. There is no documentation of the education, training, or employment history of the qualifying relative or her husband. Although noting counsel has provided information regarding the country's unemployment rate, we note that the current update of that information states,

Official unemployment remains high at more than 31%, but may be overstated based on the existence of an extensive gray market, estimated to be between 20% and 45% of GDP, that is not captured by official statistics. [...]. [A]s a result of conservative fiscal policies and a sound financial system, in 2010 the country credit rating improved slightly to BB+ and was kept at that level in 2011-12.

The World Factbook—Macedonia, Central Intelligence Agency, April 18, 2013.

The applicant has failed to establish that his wife is unable to find work to support herself in his absence, that such absence would impose on her any costs of supporting him, or that he would be unable to continue assisting her with household expenses.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the

record. Therefore, the applicant has not met his burden of establishing his wife would suffer hardship beyond the common results of removal or inadmissibility.

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. resident spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she 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 wife's situation, the record does not establish that the hardship she 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 met that burden and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.