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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: NOV 06 2013

Office: MT. LAUREL

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mt. Laurel, New Jersey, denied the waiver application, as well as a subsequent Motion to Reopen or Reconsider the waiver denial, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Indonesia 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 or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director found that the applicant failed to establish that the bar to her admission would result in extreme hardship to her U.S. citizen husband and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly and denied the applicant's subsequent motion. *Decisions of the Field Office Director* dated July 29, 2011 and January 30, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant inadmissible and in finding she had not established extreme hardship to her qualifying relative if she is unable to remain in the United States. In support of the appeal, the applicant submits a brief. The record also includes: a brief in support of a Motion to Reopen or Reconsider the waiver denial; applicant's statements; copies of birth and marriage certificates and of a passport, visa, and I-94; financial evidence, including tax returns, W-2s, a bank statement, and insurance information; copies of a Form I-485 and related documents; and photographs. The entire record was reviewed and considered in rendering this decision.

The applicant claims that her misrepresentation to a consular officer that she was married, rather than single, was not material because she had sufficient equities to have been issued a visa without the misrepresentation and because USCIS failed to show she would not have been issued a visa. The record reflects that, after being interviewed, the applicant was issued a five-year, multiple entry, B1/B2 nonimmigrant visa (NIV) on May 3, 2001. The record also shows that the applicant knew marital status was a factor in consular decisions regarding visa issuance, that she acted on the advice of a travel agency to which she paid nearly \$3,000, that she and the person posing as her spouse appeared together at their NIV interview, and that the travel agency informed them both that being married would enhance their chances of receiving a visa.

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 shows that, on May 21, 2001, the applicant procured U.S. admission in B2 status using a visa issued based on an application stating she had been married in Indonesia. Later seeking immigration benefits as the spouse of a U.S. citizen, she claimed not to have been married previously. After investigating the contradictory claims, USCIS determined the Indonesian marriage had never occurred, the false claim represented an attempt to procure a visa by fraud, and the applicant was thus inadmissible. While admitting the misrepresentation, the applicant claims that it was not material and therefore incurs no inadmissibility.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record establishes that the applicant misrepresented her marital status in order to increase her chance of receiving a visa. Pursuant to section 214(b) of the Act, a nonimmigrant visa applicant "shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to nonimmigrant status...." The applicant's misrepresentation of her marital status shut off a potential line of inquiry relevant to her ties to her country and eligibility for nonimmigrant visa, and it is therefore material. Contrary to counsel's assertion, the applicant bears the burden of showing that a consular officer would have issued the visa despite knowing the truth about her being unmarried. *See* section 291 of the Act. As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, she requires a waiver of this inadmissibility in order to adjust status to that of lawful permanent resident and remain here with her husband.

A waiver of inadmissibility under section 212(i)(1) 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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

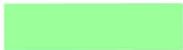
Regarding whether the applicant has established that her husband would suffer extreme hardship by relocating to Indonesia, counsel claims that the qualifying relative's U.S. ties include a close bond with his 25-year-old son and other unspecified family members and that he would have difficulty adjusting to life in Indonesia due to lack of cultural knowledge, language fluency, and employment prospects. The record contains no documentary evidence concerning his relationship with his son other than a photograph and nothing establishing the existence of any other relatives or their whereabouts. There is no indication the applicant's husband has investigated the job opportunities available to him, nor anything showing that moving overseas would entail more than the common or typical consequences of removal or inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Regarding the claim of emotional hardship due to separation from the applicant, the record reflects that she and her husband married in 2007 and reside together. The AAO acknowledges the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the record does not establish the severity of this hardship or the effects on his daily life. Counsel's contention that the applicant's husband would experience emotional and mental hardship beyond the common result of separation from a spouse or family member is unsupported by the record.

Regarding the financial component of separation hardship, the record shows no financial contribution by the applicant toward household income, and tax returns establish the applicant's husband as the sole wage earner. Although the record contains the applicant's 2009-2010 work permit, there is no documentation she has ever earned income and no evidence to support her claim to have worked and sent money to her relatives in Indonesia. The record thus fails to show the applicant's presence will lessen her husband's financial burden and make him better able to meet his financial obligations, or that her absence will impair his economic situation. There is no indication the qualifying relative lacks the economic resources to visit his wife overseas to ease the pain of separation.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to his wife's inadmissibility do not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some hardship on her husband. Based on the evidence provided, however, the applicant has not established that her husband would suffer hardship beyond those problems normally associated with family separation if he remained in the United States without the applicant.

The documentation on record, when considered in its totality, reflects the applicant has not established that her spouse will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's



inadmissibility. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.