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



U.S. Citizenship
and Immigration
Services

DATE: **NOV 13 2013**

Office: OMAHA

FILE: [REDACTED]

IN RE: [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 (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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Omaha, Nebraska and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

In a decision, dated March 25, 2013, the field office director found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. Although the field office director cited to the relevant law and described how it was applied, she did not make a finding regarding extreme hardship, denying the applicant's waiver application on discretion alone.

On appeal, counsel states that the field office director erred in issuing the applicant a Request for Further Evidence instead of a Notice of Intent to Deny, that the applicant has demonstrated extreme hardship to his spouse, that his misrepresentation regarding the number of children he had was not deliberate or material, and that he should be granted a waiver as a matter of discretion.

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:

- (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.

The record reflects that the applicant misrepresented his immigrant intent when applying for a nonimmigrant visa in 2009. The record indicates that the applicant applied for a nonimmigrant visa to attend a business conference in Las Vegas, Nevada. On the application he stated that he was married, with three children, and a business in Vietnam. His visa was granted on January 21, 2009. From that date on, the record shows that the applicant's actions indicate his true intentions were to immigrate to the United States. On January 22, 2009, one day after his visa was issued, he divorced

his wife. In addition, once he arrived in the United States, there is no evidence that he attended the conference he previously stated as the reason for traveling to the United States. Then, on March 24, 2009, 57 days after his entry, the applicant married a U.S. citizen. Given the applicant's actions one day after his visa was issued up to and including his marriage only 57 days after entering the United States, we find adequate support for the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant does not contest this finding of inadmissibility on appeal. The applicant's qualifying relative is his U.S. citizen spouse.

We note that the field office director cites the applicant's inconsistent testimony regarding the number of his children as a material misrepresentation. Counsel contests this finding. The Attorney General has established the test that a misrepresentation is material if (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which might have resulted in a decision to exclude the alien, *Matter of S-- and B-- C--*, 9 I.&N. Dec 436 (BIA 1961). It is unclear how the applicant's misrepresentation regarding the number of children he has would have impacted his eligibility. However, we do find, as stated above, that the circumstances generally reflect that the applicant had immigrant intent when he applied for a nonimmigrant visa and was admitted to the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for the reasons stated above regarding his immigrant intent.

Section 212(i) of the Act provides that 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 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 v. I.N.S.*, 138 F.3d 1292 (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 record of hardship includes: an affidavit from the applicant’s spouse, a letter from the applicant’s employer, a letter from the applicant’s pastor, statements from friends, financial documentation, and country condition reports.

The applicant’s spouse claims that she will suffer extreme emotional and financial hardship as a result of separation because she is financially dependent on the applicant and he is her closest family member. She states that before the applicant was in her life she was alone and depressed.

In regards to relocation, the applicant’s spouse asserts that she has been living in the United States for 10 years, that although she is originally from Vietnam, she is accustomed to the conditions in the United States and is not close to any of her family in Vietnam. She states that she would suffer hardship if she relocated because of the conditions in Vietnam and the lack of employment opportunities. The record also indicates that he applicant’s spouse has concerns over the medical care available in Vietnam.

We note that the current record fails to establish that the applicant's spouse will suffer hardship rising to the level of extreme as a result of the applicant's inadmissibility. The record lacks documentation to show the couple's full financial situation and whether or not hardship would be suffered in the applicant's absence. In addition, the record lacks supporting documentation to establish the extent and symptoms of the applicant's spouse's emotional health.

In regards to relocation, the record indicates that the applicant has significant ties to Vietnam. The applicant previously stated that he has a business and three children in Vietnam. The record does not indicate what his current relationship is to the business he owned in that country. Furthermore, the applicant's spouse is from Vietnam and has family in the country. We acknowledge that the employment and health care conditions in Vietnam are not the same as they are in the United States, but the record fails to show how the conditions in Vietnam, given the applicant and his spouse's ties to the country, would cause them extreme hardship upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 appeal will be dismissed.

ORDER: The appeal is dismissed.