



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **NOV 25 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 (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*  
for  
Ron Rosenberg  
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). A subsequent motion was granted and the underlying application remained denied. The matter is now before the AAO on motion. The motion is granted and the prior decisions of the AAO are affirmed.

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 [REDACTED] however, the applicant never attended these meetings, and proceeded directly to [REDACTED] Illinois after entering the United States. The applicant does not contest this finding of inadmissibility. Rather, the 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 his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director, March 3, 2010.*

On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *See Decision of the AAO, dated August 30, 2012.*

On motion, the AAO found that extreme hardship to a qualifying relative had not been established. Consequently, the motion was granted and the underlying application remained denied. *See Decision of the AAO, dated May 10, 2013.*

On motion, counsel for the applicant submits the following: mental health documentation pertaining to the applicant's spouse; financial documentation, including evidence establishing foreclosure proceedings currently pending; and country condition documentation for Ukraine. 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-Moralez*, 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 v. I.N.S.*, 138 F.3d 1292, 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, the AAO found that the record did not show that the applicant’s spouse’s mental health condition was so serious that it was interfering with her ability to carry out her daily activities or otherwise amounted to hardship beyond the common results of inadmissibility of a loved one. As for the financial hardship referenced, the AAO found that the evidence in the record was insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant’s absence. The AAO concluded that the difficulties that the applicant’s wife would face as a result of her separation from the applicant, even when considered in the aggregate, did not rise to the level of extreme as contemplated by statute and case law. *Supra* at 5.

With the instant motion, counsel has submitted an updated evaluation from [REDACTED] Ms. [REDACTED] notes that the applicant’s spouse recently lost her job as a dental assistant due to declining vision and difficulty dealing with stressful, high-pressure situations and is now only working part-time. As a result, Ms. [REDACTED] explains that the applicant’s spouse is unable to afford to pay for her home and is considering bankruptcy. Dr. [REDACTED] contends that the applicant’s spouse has lost 40 pound due to ongoing stress, depression, anxiety and fear of the unknown and is taking medications for her condition. Dr. [REDACTED] asserts that the applicant’s spouse will not be able to travel regularly to visit the applicant as a result of her financial situation. *Letter from* [REDACTED] dated May 30, 2013. In addition, evidence that the applicant’s spouse has been diagnosed with Major Depressive Disorder and Anxiety and has been prescribed Lexapro, Alprazolam and psychotherapy, has been submitted. See *Progress Note from* [REDACTED], dated June 4, 2013. Further, evidence establishing that the applicant’s spouse is in two foreclosure proceedings has been provided. See *Letter from* [REDACTED] dated June 3, 2013. Finally,

documentation establishing the applicant's current financial contributions to the household has been submitted. Based on a totality of the circumstances, the AAO finds that on motion it has been established that the applicant's spouse would experience extreme hardship were she to remain in the United States while the applicant relocates abroad as a result of his inadmissibility.

In regard to relocation, the AAO found on motion that 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 that the applicant's wife was at risk due to crime if she relocated to Ukraine. The AAO concluded that the applicant had 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. *Supra* at 5. On motion, these issues have not been addressed. Documentation submitted on motion consists of general articles regarding Ukraine that fail to establish the specific hardships the applicant's spouse, a native of Ukraine, would experience were she to return to Ukraine to reside with the applicant as a result of his inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

On motion, 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 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 spouse'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 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 motion is granted and the prior decisions of the AAO are affirmed.