



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 03 2013

OFFICE: DENVER

FILE: [REDACTED]

IN RE: [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:

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, Denver, Colorado, denied the waiver application. A subsequent appeal and motion to reopen and reconsider were dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Nepal 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his lawful permanent resident spouse.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated January 31, 2012. On appeal, the AAO determined that the applicant had demonstrated extreme hardship to his spouse upon separation, but not relocation, and dismissed the appeal accordingly. *See Decision of the AAO*, dated January 11, 2013. On motion, the AAO affirmed its prior decision. *See Decision of the AAO*, dated June 4, 2013.

The applicant has submitted a second motion to reopen or reconsider the dismissal of his appeal. On the applicant's motion, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship upon relocation because of her ties to the United States, medical condition, and country conditions in Nepal.

In support of the applicant's motion to reopen and reconsider, the applicant submitted a letter from a professor and the professor's curriculum vitae.

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 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 immigrant 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...

The AAO previously determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation based on the submission of fraudulent employment history on a Form I-140, Petition for Alien Worker, and corresponding Form G-325A, Biographic Information. The applicant does not dispute this ground of inadmissibility on motion.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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 AAO previously determined that the applicant demonstrated extreme hardship to his spouse upon separation from the applicant based upon the applicant's spouse's financial, emotional, and medical reliance upon the applicant. The record reflects that the applicant's spouse had discontinued her employment in retail due to a diagnosis of severe bilateral lower extremity varicosities that affect her ability to stand and walk for long periods of time. The record also reflects that the applicant and his spouse have been married for over 15 years and the applicant's spouse asserts that she needs the applicant's assistance, especially with her medical condition. The medical documentation notes that the applicant's spouse has difficulty walking any distance, but that the applicant provides assistance with daily living activities and chores.

On motion, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if she relocates to Nepal to reside with the applicant due to her health and the country conditions in Nepal, including discrimination against women. The applicant's spouse asserts that she would be leaving her son, who resides with her, behind in the United States. The record reflects that the applicant's spouse has two adult children residing in the United States, a daughter who is 25 years of age and a son who is 22. It is also noted that there are no current travel warnings concerning Nepal issued by the U.S. Department of State. The U.S. Department of State

did issue a demonstration warning for January 25, 2012, indicating that a demonstration concerning rising fuel prices was expected for that date.

The record contains a letter from a professor stating that, based upon his knowledge and expertise regarding the political, economic, and cultural climate in Nepal and a conversation with the applicant's spouse, he is of the opinion that the applicant's spouse will suffer extreme hardship if she relocates to Nepal. The professor contends that the applicant's spouse lacks the cultural training required for life in a Nepali household because she has adopted the American culture. The professor also asserts the family's stability would be in jeopardy because she would need to take on many duties to support the household, as the daughter-in-law, upon return to Nepal. Further, the professor asserts that the political situation in Nepal is volatile, which would further exacerbate the applicant's spouse's health condition.

The applicant's spouse is a native of Nepal who entered the United States on November 6, 1998, at 37 years of age. As the applicant's spouse resided in Nepal for the majority of her life, it is unclear why the applicant's spouse would not be able to adjust to life in a Nepali household. In fact, the applicant's spouse asserts that, as a daughter, she followed all the traditions and requests of her family in her upbringing. As the applicant's spouse suffered from her medical condition while previously residing in Nepal, it is unclear why she would be expected to take on more responsibilities upon return, as she continues to suffer from the same condition. There is also no indication that the applicant's spouse's condition caused an inability to fulfill cultural expectations as a daughter-in-law during her residence in Nepal.

Further, the applicant's spouse asserts that she has been afflicted by varicose veins for the last 18 years and was advised, in Nepal, to undergo surgical treatment. The letter from a physician in the United States confirms that the applicant's spouse requires surgical "stripping" for her condition, without which she would continue to exhibit her current symptoms of inability to stand or walk or perform daily activities for very long. The applicant's spouse asserted that she was unable to obtain insurance prior to a grant of permanent residence status and relied upon painkillers in Nepal. The applicant's spouse indicates a concern regarding the lack of quality health care in Nepal for her condition. However, as previously noted by the AAO, despite consecutive medical recommendations and a grant of permanent residence status on July 27, 2011, the applicant's spouse has not sought surgical treatment for her condition while residing in the United States. The record is insufficient, in the aggregate, to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to Nepal.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual

or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to a qualifying relative upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this waiver as a matter of discretion.

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 AAO’s prior decision is affirmed.

ORDER: The motion is granted and the prior decision of the AAO is affirmed.