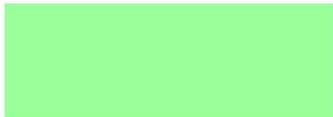


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

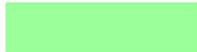


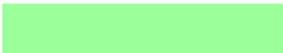
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Date: **OCT 04 2013**

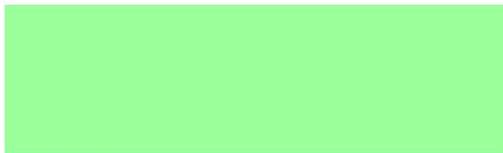
Office: SAN JOSE

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 (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,

  
f. b.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, California, 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 attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant is applying for 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 her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 28, 2012.

In support of the appeal, counsel for the applicant submits the following: a brief; affidavits from the applicant and her spouse; biographic and USCIS documentation pertaining to the applicant and her family; a letter from the applicant's spouse's optometrist; support letters; financial documentation; medical documentation pertaining to the applicant's mother-in-law; and an article about mother-child separation. 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, that:

- (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:

- (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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, the field office director found that the applicant has misrepresented herself with respect to two separate B-2 visa applications in November 2009. The field office director noted that the applicant had rearranged her name, omitted her full

birth date and had failed to disclose that she had been previously refused a visa in 2001. Further, the field office director noted that the applicant's K-1 visa was refused in 2002 because her relationship to the petitioner was found to not be credible. *Id.* at 2-3.

The record establishes that a K-1, Petition for Alien Fiancée (Form I-129F) was filed on the applicant's behalf by her previous brother-in-law, [REDACTED] in August 2001. Pursuant to the applicant's own admission, she acknowledged that she was aware that her previous brother-in-law had submitted a K-1 petition on her behalf and confirmed that she had no intention of marrying her previous brother-in-law upon entering the United States because she wanted to reunite with her ex-husband. She maintained that she was told that her brother-in-law would help her come to the United States by way of a fiancé petition. *See Record of Sworn Statement in Administration Proceedings*, dated May 12, 2011. Further, on the Form I-601 submitted by the applicant in November 2010, the applicant admits that it was her own fault that a K-1 petition was filed on her behalf by her previous brother-in-law because she had no intention to marry him and she just wanted to unite with her ex-husband as soon as possible. The applicant concludes that she knew what she had done was wrong and she apologizes for her mistake. *See Form I-290B*, dated November 8, 2010. The record establishes that the K-1 petition was approved in April 2001 but the K-1 Visa was refused based on the finding that the relationship between the applicant and Mr. [REDACTED] the K-1 petitioner, was not credible. In April 2002, the K-1 petition was returned to the USCIS for review based on a belief by the consular officer that the relationship between the applicant and Mr. [REDACTED] existed solely for immigration purposes. On appeal, counsel does not contest the applicant's fraud or willful misrepresentation with respect to the K-1 visa application. The AAO concurs with the field office director that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act, for having attempted to procure a K-1 visa by fraud or willful misrepresentation.

With respect to the field office director's findings that the applicant had also misrepresented a material fact when applying for nonimmigrant visas on two separate occasions in 2009, as outlined above, as the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i) of the Act, for her misrepresentation with respect to the K-1 visa application, it is not necessary to evaluate whether the incidents with respect to the applicant's B visa applications in 2009 also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 spouse is the only qualifying relative in this case. Hardship to the applicant, their U.S. citizen child or her mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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 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*, 138 F.3d at 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.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship if he remains in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse first explains that his left eye was badly damaged and surgically removed as a result of an accident many years ago. He states that the prosthetic eye he wears requires considerable amount of daily cleaning and maintenance to avoid infection, and he cannot imagine how he could take care of his eye without his wife's help. He further maintains that his good eye is particularly sensitive to tears and allergy and his wife helps him around when he cannot see. In addition, the applicant's spouse explains that he loves his wife very much and notes that she is essential to his life and he cannot bear being apart from her again. Moreover, the applicant's spouse contends that his wife takes care of their child day and night while he works and he does not have the income to afford childcare were his wife to relocate abroad. Finally, the applicant's spouse contends that he needs his wife to help care for his mother while everyone is at work, as his mother suffered a stroke and is advised not to be by herself throughout the day. *Declaration of Phat Tien Lam*, dated January 29, 2013.

To begin, the AAO acknowledges the applicant's spouse's contention that he will experience emotional hardship were his wife to relocate abroad, but the record does not establish the level to which this would affect his life. The AAO notes that the applicant's spouse separated from the applicant in 1999 to reside in the United States, they subsequently divorced in 2001 and the applicant did not enter the United States until November shortly after marrying her husband in August 1999. 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)). As for the applicant's spouse's medical condition, the documentation provided establishes that the applicant's spouse has been functioning with only his right eye for over 20 years, and as noted by his treating physician, he has been able to adapt. Further, the medical documentation establishes that his condition is being monitored, and, should his allergies act up, he can return to the office for treatment. The letter provided does not reference what specific hardships the applicant's spouse will experience were his wife to relocate abroad. The AAO notes that the applicant's spouse currently resides with his sister and he has previously lived with his brother, and it has not been established that the siblings would be unable to help the applicant's spouse should the need arise.

With respect to the care of their young child, born in 2012, it has not been established that the child is unable to return to Vietnam with her mother, thereby avoiding any potential hardships arising from becoming primary caregiver to his child were his wife to relocate abroad. Nor has any documentation been provided from the spouse's mother's treating physician establishing her current medical situation, the short and long-term treatment plan, what assistance she needs and what hardships she would experience were the applicant to relocate abroad. The medical documentation provided on appeal establishes that the applicant's mother was admitted to the hospital on an elective basis in January 2013 for an angiogram and the problems were resolved at discharge. *See Hospital Encounter, Stanford Hospital and Clinics*, dated January 24, 2013. As noted above, it has not been

established that the applicant's spouse's siblings are unable to help her mother as needed. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regard to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the applicant's spouse contends that he cannot move to Vietnam because he would not be able to obtain gainful employment to support himself and his family. He further maintains that all of his immediate family is in the United States and he no longer has an extensive network of family and friends. Finally, the applicant's spouse references the substandard medical system in Vietnam. *Supra* at 4-5. No supporting documentation has been provided to support the applicant's spouse's assertions that he would experience extreme hardship in Vietnam, where he was born and resided for the first twenty-nine years of his life. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship.

The record, reviewed in its entirety, 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 he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise 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 appeal is dismissed.