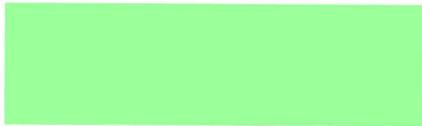


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: **OCT 30 2013**

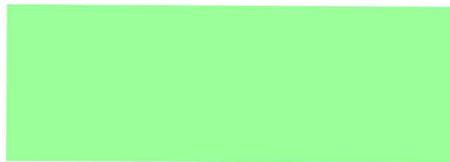
Office: BOSTON

FILE: 

IN RE: Applicant: 

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 cursive script that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Boston, Massachusetts, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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. He has requested a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

In a decision dated May 23, 2013, the field office director noted that following the applicant's adjustment of status interview, an immigration officer found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act because he obtained admission to the United States with a counterfeit B1/B2 visa. The field office director confirmed the finding of inadmissibility and found that the applicant had failed to demonstrate extreme hardship to his qualifying spouse. The field office director noted that although the applicant claimed his qualifying spouse would suffer financial hardship in his absence, he did not submit proof of his own employment and income or any documentation of household expenses. The field office director also found that although medical and psychological records confirmed that the qualifying spouse has suffered physical and mental health problems since a car accident in 2007, the records did not address any effects the applicant's removal would have on his spouse's health. Furthermore, the field office director noted that the psychological evaluation indicated that the qualifying spouse had separated from the applicant and had considered divorcing him. Finally, the field office director pointed out that the record did not contain a statement from the qualifying spouse regarding hardship she would suffer if the waiver application were denied. Accordingly, the field office director denied the waiver application.

On appeal, counsel for the applicant states that the applicant filed his waiver application without representation and did not understand the instructions, so he did not know how to submit sufficient evidence of hardship. Counsel also asserts that the applicant inadvertently failed to list his children as qualifying relatives. Counsel claims that the applicant's children would suffer extreme hardship if the waiver application were denied because the applicant is the primary financial provider for his family, his spouse is unable to work or care for her children alone because she is disabled, and his children would be deprived of their father's support if the applicant were removed.

The record includes, but is not limited to: a statements from the applicant; medical records and psychological evaluations relating to the qualifying spouse; documentation of the qualifying spouse's disability and Social Security payments; and financial records. 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.

The record reflects that the applicant entered the United States on April 4, 2004 with a B1/B2 visitor's visa bearing his name and photograph. On May 4, 2010, the qualifying spouse filed a Form I-130, Petition for Alien Relative, on the applicant's behalf and the applicant concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was approved on October 21, 2010. Following the approval, USCIS determined that the visa the applicant had used to enter the United States in 2004 was counterfeit. Because the applicant procured admission to the United States through the use of a fraudulent visa, he is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding of inadmissibility on appeal.

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 applicant is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act as the spouse of a U.S. citizen. A waiver is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen or lawfully resident spouse or parent. The applicant's U.S. citizen spouse is the only qualifying relative in this case. The applicant's children are not qualifying relatives under section 212(i), so hardship to them will be considered only to the extent that it results in hardship to his qualifying spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 of Immigration Appeals (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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen children would face extreme hardship if the waiver application were denied.¹ Counsel claims that the applicant is the primary provider for his family, that his spouse would be unable to care for the children on her own due to her disability and low income, and that the children need the support of their father.

In his written statement, the applicant claims that his U.S. citizen children will suffer extreme hardship if he is not permitted to become a legal permanent resident. He states that he supports his family because his spouse is disabled and receives disability payments which are insufficient to cover the family's expenses. He asserts that the family's housing and utility expenses total approximately \$2,723 per month, not including food, transportation, and clothing. He earned a gross income of \$96,505 in 2012 through his own business and pays all of the family's bills, while his spouse earns only \$951.17 per month in Social Security payments. Therefore, the applicant contends that it would be "impossible to sustain the family" without his income. He also states that his spouse is unable to care for the young children on her own due to her disability, and the children "are too young to be without their father."

The AAO finds that the applicant has demonstrated that his qualifying spouse would face extreme hardship if separated from the applicant due to her inability to care for her children and manage her family's financial obligations on her own. The applicant's children are three and four years old and the evidence establishes that the qualifying spouse would be unable to provide them with proper care in the applicant's absence. In a Verification of Disability/Special Need for Parent/Guardian, dated April 24, 2012, a doctor certifies that the qualifying spouse is "unable to care for both children at the same time [without] assistance" due to a permanent disability resulting from a neck injury in December 2007. A psychological evaluation by [REDACTED] Ph.D., dated November 5, 2009, also notes that the qualifying spouse suffers from "overwhelming anxiety" and has memory impairments, diagnosed as "Amnestic Disorder secondary to head trauma." The evaluation shows that these mental health issues have negatively impacted the qualifying spouse's relationships with her children and the applicant, her ability to sleep, her ability to complete an education and job training, and her ability to remember basic information.

The record also establishes that the qualifying spouse would be unable to support herself and her children without the applicant's financial contributions. Social Security Administration records dated June 12, 2012 demonstrate that the qualifying spouse earns \$950.10 per month in disability payments. By contrast, the applicant owns a business and earned an adjusted gross income of \$33,849 in 2012, with gross sales of \$96,505. While the record does not contain full documentation of all of the family's expenses, it does show that they pay \$242 per week in child care for their eldest child, that their water bill is past due by over \$300, and that their electric bill ranges from \$185 to \$662 per month. These amounts do not include expenses for housing or

¹ As mentioned above, children are not qualifying relatives for purposes of a waiver of inadmissibility under section 212(i) of the Act. The applicant's spouse is the only qualifying relative in this case.

food. The qualifying spouse would be unable to afford the costs of childcare, utilities, and other basic expenses for herself and her children on her disability income alone. We acknowledge the evidence indicating that the applicant and his spouse were separated and contemplating divorce in the past, the current record shows that they remain married and that the applicant supports his wife and children. In the aggregate, we find that the qualifying spouse's inability to meet the basic physical and financial needs of herself and her children on her own due to her significant disability would constitute extreme hardship for her in the applicant's absence.

However, the applicant has not shown that his qualifying spouse would experience extreme hardship if she were to relocate to Brazil with him. The record indicates that the qualifying spouse is originally from Brazil and the applicant has not claimed that his spouse would be unable to return to that country or shown what hardships she would experience there. The burden of proof in this proceeding lies with the applicant, and "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247. We have long held that 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). As the applicant has not demonstrated that his qualifying spouse would face extreme hardship upon relocation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Because we have found that the applicant has not established extreme hardship to a qualifying relative, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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.