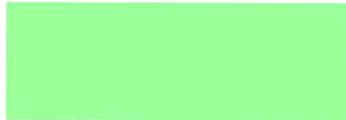


(b)(6)

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

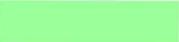


DATE: SEP 05 2013

OFFICE: SEATTLE, WASHINGTON

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:

SELF-REPRESENTED

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 "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Seattle, Washington 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 the Netherlands who was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant 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. *See Decision of the Field Office Director*, dated February 11, 2013.

On appeal the applicant contests inadmissibility and contends that her U.S. citizen spouse will experience extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received March 14, 2013.

The record contains, but is not limited to: Form I-290B and the applicant's spouse's statement thereon; various immigration applications and petitions; a "brief" within which are two character reference letters; a hardship declaration from the applicant's spouse; the applicant's declaration; numerous letters of support; prior counsel's letter in support of a waiver; financial records; medical and disability-related records; country conditions-related documents for the Netherlands; birth and marriage certificates; and the applicant's sworn statements and other documents related to her inadmissibility and removal proceedings. The entire record was reviewed and considered in rendering this 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.

The record shows that on May 9, 1996 the applicant attempted to gain admission to the United States by knowingly presenting the birth certificate of another individual whose identity she asserted as her own. When confronted by immigration officers concerning her false claim to U.S. citizenship, the applicant admitted that her then boyfriend had given her the false birth certificate and she willingly misrepresented her identity and citizenship to gain entry to the United States. The applicant signed a sworn affidavit detailing her activities. Based on the foregoing, the field office director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). On the Form I-290B, the applicant's spouse asserts that this finding is

factually incorrect and that poor judgment does not warrant intent. The AAO finds this assertion unpersuasive as the applicant admitted to knowingly presenting another individual's passport as her own to U.S. immigration officers and misrepresenting her identity and citizenship in order to gain admission to the United States. The applicant has failed to demonstrate that she did not have the requisite knowledge to procure admission into the United States by willful misrepresentation. Accordingly, the AAO concurs with the field office director that the applicant is inadmissible to the United States 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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 spouse is a 57-year-old native and citizen of the United States who contends that he will suffer hardship of an emotional, physical and economic nature if the applicant is removed to the Netherlands. It is asserted in the appeal brief that the applicant is her spouse’s primary emotional, financial and familial support, his spiritual pillar, the strength and stability in their relationship, and that separation would potentially cause him psychological and emotional distress resulting in depression and difficulty coping on a day-to-day basis. Declarations from the applicant and her spouse, as well as supporting letters from others, concur that they are a very close couple and the applicant’s spouse relies on the applicant emotionally. While the AAO recognizes that the applicant’s spouse will experience emotional challenges if separated from the applicant, the evidence does not distinguish these challenges from those ordinarily associated with a loved one’s inadmissibility or removal.

The applicant’s spouse indicates that on March 24, 2010, the Social Security Administration (SSA) determined that a July 2007 workplace injury to his right knee left him with a permanent total disability (PTD). He states that he requires daily and long-term care from the applicant who cooks, cleans, carries groceries, takes him to medical appointments, walks with him and makes sure he takes his medications. The applicant’s spouse writes that he learned from a doctor in June 2009 that he had been putting too much stress on his left knee which was compensating for injury to the right. He filed a second workers compensation claim in February 2010, seeking benefits for his left knee. The applicant’s spouse states that the Department of Labor required him to undergo an independent medical exam in October 2010, and the physician determined that the injury to his left knee was not work-related and his right knee was not injured. He explains that all payments

were ceased in December 2010, he appealed the decision, and an evidentiary hearing was set for April 20, 2012. Though the present waiver appeal was filed nearly one year after the hearing date, the outcome has not been addressed in the record and no new hearing-related or medical-related evidence has been submitted. While the record contains earlier medical records related to the applicant's spouse's disability and workers compensation claims and related court proceedings, there is no clear indication as to his current condition and any limitations related thereto. As noted by the field office director, the current status of the applicant's spouse's health is unclear from the evidence submitted and the record contains no evidence addressing his current prognosis, ongoing treatment, physical limitations, or any assistance he medically requires. While the AAO recognizes that the applicant's spouse has been treated for knee pain and knee strain, including right knee arthroscopic surgery in 2007, and that the applicant assists him in daily activities, the evidence in the record is insufficient to show that he requires constant or significant physical assistance or that he would be unable to care for himself in the applicant's absence.

The applicant's spouse indicates that his sole personal source of income is from Social Security disability benefits, through which he received \$9,947 in 2012. The applicant contends that her spouse's income alone will be insufficient for him to meet his financial obligations and hire a full-time nurse or caregiver to assist him. She adds that no one else will help her spouse because his children are adults and have their own lives. As previously noted, the evidence is insufficient to demonstrate that the applicant's spouse requires full-time medical or physical assistance. As the field office director noted, the applicant testified during a November 14, 2011 adjustment interview that her spouse's disability payments were their only source of income. A joint federal tax return submitted on appeal shows that the applicant earned \$9,260 in 2012 wages from Lionbridge U.S., Inc., which would appear to indicate somewhat new employment. A Form I-912, Request for Fee Waiver, dated March 8, 2013, avers that their current combined monthly income is \$3,685 and their combined monthly costs are \$3,191. Corroborating expense documentation has not been submitted. The applicant and her spouse have not addressed how monthly financial obligations in excess of \$3,600 were previously met on disability income of less than \$1,000 alone, and the record is silent as to other regular sources of income or support. As the applicant has only recently secured employment, and given the income-expense discrepancies and the lack of documentary evidence corroborating expenses, the evidence is insufficient to demonstrate that the applicant's spouse would be unable to meet his financial obligations in the applicant's absence.

The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse including the emotional, physical and economic impacts described. The AAO acknowledges that separation from the applicant would cause various difficulties for her U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse asserts relocation-related hardship of an economic, emotional, and physical nature. He indicates that he has always resided in the United States where he enjoys close family ties to his three adult children and nine siblings among others. The applicant's spouse explains that he would be unable to adapt to life in the Netherlands and learn the Dutch language at 57 years of age. He is concerned that he would be unemployable as a result of the language barrier

and the country's 5.8% unemployment rate, and he fears that despite the applicant's completion of technical fashion school in the Netherlands, she would be unable to secure employment sufficient to support them both. The applicant's spouse writes that they would likely have to live with one of the applicant's four siblings in the Netherlands and would have to rely on public transportation because they would be unable to afford a vehicle. He adds that as a result of his knee injuries, taking buses and trains would be a physical challenge as would the nine-hour flight to the Netherlands. The applicant's spouse states that he is not sure whether his social security payments would continue in the Netherlands and it would be impossible for him to keep up with his lawsuit with the Department of Labor. As previously noted, the applicant's spouse has not addressed on appeal the results of his April 2012 evidentiary hearing nor have any updates been provided with regard to his workers compensation claims. He is also concerned that he lacks lawful immigration status in the Netherlands and will have to pay a fee of 1,250 Euros to secure lawful status, a price he cannot afford. Evidence submitted to support these claims include declarations from the applicant and her spouse, letters from family members, a U.S. State Department country report, internet printouts regarding the job and real estate markets in the Netherlands, and a letter from an attorney asserting Netherlands' immigration expertise. The evidence is insufficient to support the applicant's claims of extreme hardship.

While not insignificant, separation from loved ones in the United States, adjusting to life abroad, learning a new language, and securing housing, employment and lawful immigration status are the types of challenges ordinarily associated with relocation. The evidence submitted shows that unemployment in the Netherlands is no greater than that in the United States, and as the field office director noted, U.S. citizens are exempt from a Dutch language requirement for employment.¹ With regard to the applicant's spouse's concern over disability benefits, the field office director noted that U.S. citizens living abroad are not precluded from receiving any benefits they are otherwise eligible to receive.² It appears from the applicant's spouse's statements that they will be able to reside with one of the applicant's siblings in the Netherlands, and while securing employment is not without challenge, the evidence is insufficient to demonstrate that either the applicant or her spouse would be unemployable in the Netherlands or unable to support themselves financially. And while relying on public transportation may be somewhat physically challenging for the applicant's spouse, the evidence does not demonstrate that his condition precludes him from such activities or that he would be unable to make alternate arrangements.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his stated emotional, physical, cultural, economic and employment concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Netherlands to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.

¹ See Decision of the Field Office Director, at page 7, referencing the Netherlands' Immigration and Naturalisation Service for the Ministry of the Interior and Kingdom Relations website at <http://english.ind.nl/>.

² See Decision of the Field Office Director, at page 7, referencing the U.S. Social Security website at www.ssa.gov.

Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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.