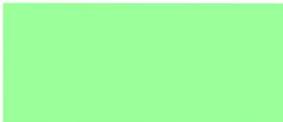


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

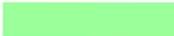


U.S. Citizenship
and Immigration
Services

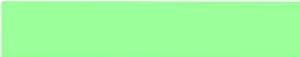


Date: **SEP 27 2013**

Office: SANTA ANA, CALIFORNIA

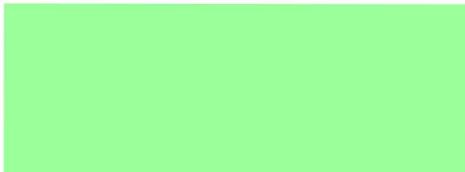
FILE: 

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:



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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Syria 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 willfully misrepresenting a material fact in order to obtain an immigration benefit. The record indicates that the applicant is married to a U.S. citizen and the father of a U.S. citizen stepson. He 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 with his spouse and stepson.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 26, 2011.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in finding the applicant inadmissible for misrepresentation, as he "did not enter the United States with a preconceived intent to remain." *Counsel's appeal brief*, dated September 21, 2011. However, if the applicant remains inadmissible to the United States, he has established that his wife will suffer extreme hardship if she joins him in Syria or remains in the United States. *See id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, his wife, stepson, and mother-in-law; letters of support; medical documents for the applicant's wife and mother-in-law; email messages between the applicant and his wife; a marriage certificate for the applicant and his wife; school records for the applicant's stepson; financial documents; household and utility bills; photographs; a letter from a Syrian oncologist and documents on cancer treatment in Syria; and country-conditions documents on Syria. The entire record was reviewed and considered in arriving at 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.

. . . .

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (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 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 [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Hardship to the applicant or his stepson can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 United States Citizenship and Immigration Services (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 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 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.

In the present case, the record indicates that on January 18, 2008, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain until March 21, 2008. On March 12, 2008, the applicant married his wife, a U.S. citizen. The applicant failed to depart the United States when his authorization expired. On May 15, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485).

The Department of State Foreign Affairs Manual (FAM) states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of the visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident...” *DOS Foreign Affairs Manual, 9 FAM Visas § 40.63 N4.7(a)(1)*. The Department of State developed the 30/60-day rule which applies when, “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... Marrying and takes [sic] up permanent residence.” *Id.* at § 40.63 N4.7-1(3). Under this rule, “If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.” *Id.* at § 40.63 N4.7-2. Moreover, “[i]f an alien initiates such violation of status occurs more than 30 days but less than 60 days after entry into the United States, no presumption of misrepresentation arises. However, if the facts in the case give the consular officer reasonable belief that the alien misrepresented his or her intent, then the consular officer must give the alien opportunity to present countervailing evidence.” *Id.* at § 40.63 N4.7-3. Although the AAO is not bound by the FAM, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant married and applied for permanent residence within 60 days after entering on a B-2 visa.

In his appeal brief, counsel claims that the applicant “did not enter the United States with a preconceived intent to remain.” He states that the submitted email messages show the applicant’s “inability to express himself coherently in English” and “his poor choice in terminology,” which “should not be distorted to

suggest he entered with the preconceived intent to marry and remain in the United States.” Additionally, the applicant’s marriage license was obtained by the applicant on March 12, 2008, and not on February 8, 2008. Evidence in the record shows that the Pacific Wedding Chapel obtained the license on February 8, 2008, as part of a bulk purchase of 50 licenses, but it was prepared for the applicant on March 12, 2008. Additionally, the applicant’s wife claims that the applicant proposed to her on February 14, 2008.

Even though counsel contends that the applicant did not intend to marry and remain in the United States, the applicant states in his email messages, before he even arrived in the United States, that he intended to “continue [his] life, to study, to work and establish” himself in Los Angeles. Moreover, he stated he wants a future with the applicant, not just as “good friends.” The AAO finds that the applicant’s true intent was to remain in the United States permanently. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record contains references to hardship the applicant’s stepson would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s wife is the only qualifying relative for the waiver under section 212(i) of the Act. Hardship to the applicant’s stepson will not be separately considered, except as it may affect the applicant’s spouse.

Concerning her hardship in Syria, in a letter dated September 1, 2001, Dr. [REDACTED] states the applicant’s wife is under her care for invasive breast cancer. Medical documentation in the record shows the applicant’s wife is being treated for breast cancer with chemotherapy and radiation. Dr. [REDACTED] indicates that the applicant’s wife “can” suffer extreme hardship if she joins the applicant in Syria and she would be better cared for in the United States. In her declaration dated September 14, 2011, the applicant’s wife states she fears that she would not receive or be able to afford the same cancer treatment that she receives in the United States. In his statement, Dr. [REDACTED], a hematologist-oncologist in Syria, claims “the state of cancer treatment in Syria is relatively [sic] bad” and he does not believe the applicant’s wife “can receive the same quality of treatment for breast cancer as she has been receiving in Los Angeles.” He states that cancer diagnosis and detection in Syria is not sufficient because of the quality of medical equipment and treatment. Documentation in the record supports Dr. [REDACTED] claims.

In her statement dated May 17, 2011, the applicant’s mother-in-law claims that her health is “very poor” and she resides with the applicant’s wife who takes her to her doctor’s appointments and helps her with her “daily activities.” Medical documentation in the record shows that the applicant’s mother-in-law suffers from numerous medical conditions, including diabetes, hypertension, chronic kidney disease, osteoarthritis, and she has a history of laryngeal cancer and lymphoma. In her statement filed June 17, 2011, the applicant’s wife states her mother requires “regular medical care” so that she remains cancer-free. The applicant’s mother-in-law claims that without her daughter, she “would be unable to live a normal life.” The applicant’s wife states she cannot leave her mother because there is no one else to care for her. Additionally, she states her son cannot join her in Syria because she wants him to receive a good education.

Counsel states the “living conditions in Syria have deteriorated dramatically.” The applicant’s wife states Syria is experiencing a security situation, and she worries what would happen being that she is Christian and the applicant is Muslim. The AAO notes that on March 1, 2013, the U.S. Department of State issued

a travel warning to U.S. citizens about the security situation in Syria, advising “against travel to Syria and strongly recommend[ing] that U.S. citizens remaining in Syria depart immediately.” The warning states “the security situation remains volatile and unpredictable . . . throughout the country, with an increased risk of kidnappings, bombings, murder, and terrorism” and “[n]o part of Syria should be considered immune from violence.” The warning also states that the U.S. Embassy suspended all operations in Syria in February 2012 and “therefore cannot provide protection or routine consular services to U.S. citizens” there.

Based on the record as a whole, including the applicant’s wife’s safety concerns in Syria; her serious medical issue and possible disruption of her treatment; her separation from her family in the United States, including her mother who suffers from several serious medical conditions; and the hardship to her son or, in the alternative, leaving him alone in the United States, the AAO finds that the applicant’s wife would suffer extreme hardship if she were to join the applicant in Syria.

Regarding the hardship caused by their separation, counsel’s claims that the applicant’s wife’s cancer diagnoses has “caused her extreme physical distress and instability,” and she is concerned about developing complications from her cancer and losing her financial and emotional support. Additionally, the applicant’s wife states she would fear for the applicant’s safety in Syria. As noted above, the applicant’s wife is currently undergoing treatment for breast cancer, and she claims that the applicant helps support her, “physically, financially, and emotionally.” In her statement filed June 17, 2011, the applicant’s mother-in-law claims that since the applicant and her daughter married, he has become a part of their family, and he helps them with their daily activities. The applicant’s wife states that now that she is undergoing cancer treatment, the applicant helps care for her mother. As noted above, the applicant’s mother-in-law suffers from several serious medical conditions, and she attends regular doctor’s appointments.

The applicant’s wife states the applicant and her son have “developed a strong relationship.” In his statement filed June 17, 2011, the applicant’s stepson states his biological father passed away when he was four years old, and since the applicant and his mother married, he has become a father figure for him. He claims that the applicant has spent a lot of time with him, even teaching him to drive a car. Additionally, the applicant’s mother-in-law states the applicant helps her grandson with giving him rides to school and being his support system. Further, the applicant’s wife states she would have financial difficulty paying for her son’s college, while also trying to support herself and her mother.

The AAO finds that when the applicant’s spouse’s hardships are considered in the aggregate, specifically her emotional and medical issues, and the effect of her son’s hardship on her, the record establishes that the applicant’s wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's misrepresentation and his unlawful presence. The favorable and mitigating factors are the applicant's U.S. citizen wife and stepson, the extreme hardship to his wife if he were refused admission, the applicant's lack of a criminal record, and his good moral character as described in several letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 been met.

ORDER: The appeal is sustained.