



(b)(6)

[Redacted]

DATE: **APR 16 2014**

Office: NEWARK [Redacted]

IN RE: Applicant: [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:

[Redacted]

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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Honduras 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 having attempted to obtain a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 her U.S. citizen spouse.

The field office director found 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. *Decision of the Field Office Director*, dated September 16, 2013.

On appeal, counsel submits the following: affidavits from the applicant and her spouse; evidence of the applicant's spouse's daughter's U.S. citizenship; and financial documentation. The entire record was reviewed and considered in rendering this decision.

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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant attempted to procure entry to the United States in December 1994 by presenting a fraudulent passport. By her own admission, with a Spanish interpreter, the applicant admitted that

she received the fraudulent passport from her cousin who paid a man 2,000 or 3,000 Lempiras. She further testified that she was told by her cousin to send the passport by mail to her home in Honduras as soon as she arrived in Houston, Texas and her cousin would then return the passport to the man who had sold it to him. *See Record of Sworn Statement*, dated December 16, 1994. She was consequently ordered excluded and deported. *See Record of Exclusion and Deportation*, dated January 13, 1995. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.¹

The AAO notes that the applicant was convicted of Theft \$20-\$200 in October 1991. She was fined and was sentenced to four days at Harris County Jail. *See Certificate of Disposition, Harris County District Clerk*, dated May 16, 2012. The issue of whether or not the applicant was convicted of a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act has not been addressed. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(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 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

¹ The AAO notes that the applicant may have also misrepresented a material fact when she later applied for nonimmigrant visas and failed to disclose her 1995 exclusion and deportation after attempting entry with a fraudulent passport, 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 fraud or willful misrepresentation with respect to attempting to procure entry to the United States in December 1994 with a fraudulent passport, it is not necessary to evaluate whether the incidents referenced by the field office director with respect to the applicant's nonimmigrant visa applications in 2001, 2002 and 2003 also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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. I.N.S.*, 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.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse explains that he cannot live without his wife, as he is unable to care for himself in an adequate fashion. He maintains that he works outside the home and relies on the applicant to take care of things for him. Further, the applicant's spouse contends that he does not earn enough money to travel to Honduras on a monthly basis, or even once a year, to visit his wife were she to relocate abroad. Additionally, the applicant's spouse states that he is self-employed and would not be able to afford to maintain two households, one for him and one for his wife in Honduras. Finally, the applicant's spouse asserts that if he and his wife are separated, he fears that the marriage will not withstand the separation. *See Affidavit of* [REDACTED] dated October 11, 2013.

To begin, while the AAO acknowledges the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life. As for the financial hardship referenced, no documentation has been provided on appeal establishing the applicant's spouse's expenses and assets and liabilities to establish that the applicant's relocation would cause her husband financial hardship. The AAO notes that in 2011, the applicant's spouse stated that his current individual annual income was \$90,000 gross. *See Form I-864, Affidavit of Support*, dated December 1, 2011. Alternatively, it has not been established that the applicant would be unable to obtain gainful employment abroad that would permit her to support herself and assist her husband financially should the need arise. 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)). Finally, the AAO notes that the applicant's spouse has a support network in the United States, including his three grown children from his previous marriage. It has not been established that the applicant's spouse's relatives would be unable to assist the applicant's spouse, emotionally and/or financially. It has thus not been established that the applicant's spouse would experience extreme hardship were he to remain in the United States while his spouse relocates abroad as a result of her inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse details that he has grown children from his previous marriage, and were he to relocate abroad, he would lose the relationship he has with them and the care they provide to him and he to them. No supporting documentation has been provided establishing the specific hardships the applicant's spouse would experience were he to relocate to Honduras to reside with the applicant. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. It has thus not been established that the applicant's spouse would experience extreme hardship were he to relocate to Honduras, his native country, to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's 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 refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rises 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.