



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: AUG 08 2014

Office: CHICAGO

FILE: [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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted, the prior decision of the AAO is withdrawn, and the appeal is sustained.

The applicant is a native and citizen of Ukraine 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. Citizen spouse.

In a decision dated March 3, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, March 3, 2010.

On appeal, we concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *See Decision of the AAO*, dated August 30, 2012.

On the applicant's first motion, we found that extreme hardship to a qualifying relative had not been established. The motion was granted and the previous decision to dismiss the appeal was affirmed. *See Decision of the AAO*, dated May 10, 2013.

On the applicant's second motion, we also found that extreme hardship to a qualifying relative had not been established. The motion was granted and previous decision to dismiss the appeal was affirmed. *See Decision of the AAO*, dated November 25, 2013.

The record includes, but is not limited to: a brief by applicant's current counsel in support of Form I-290B, briefs by applicant's former counsel in support of Form I-601 and Forms I-290B, financial documentation, mental health documentation pertaining to the applicant's spouse, letters of reference, and country conditions documentation for Ukraine. The entire record was reviewed and considered in rendering a decision on the motion.

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 applicant entered the United States on December 22, 1998 with a B-1 business visitor visa to attend meetings at the [REDACTED] New York; however, the applicant never attended these meetings and proceeded directly to Chicago, Illinois after entering the United

States. The applicant was therefore found inadmissible under section 212(a)(6)(C) of the Act. Previously, the applicant did not contest this finding of inadmissibility.

Counsel contends in his brief in support of the current Form I-290B that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant wilfully misrepresented a material fact for procuring a B-1 visa and failing to attend meetings he was planning to attend during his visit to the United States. Counsel further contends that the alleged misrepresentation in obtaining the visitor's visa did not amount to a material misrepresentation as it did not cut off further inquiries that may have produced a different decision by the U.S. consular officer, asserting that even if the applicant did not show an interest in auditing the meetings of the [REDACTED] the USCIS determination that the visa would have been denied is speculative.

The record indicates that the applicant was allegedly an employee of Ukraine's [REDACTED] and obtained a B-1 business visitor visa in November 1998 for the purpose of attending meetings at the [REDACTED]. The record includes a copy of a sworn statement the applicant made at the USCIS office in Chicago dated October 30, 2008, in which the applicant clearly states that he was employed by a company making stereos and radios, and that upon his arrival in the United States on December 22, 1998, he did not spend any time in New York, but boarded a bus and went straight from New York to Chicago upon his arrival.

The applicant indicated in the sworn statement that he informed the company he was working for in Ukraine that he wanted to visit the United States, that the company obtained the visa for him, and that he never appeared for an interview at the U.S. Embassy in Ukraine. Although the applicant initially stated that he was aware that the type of visa he used to enter the United States was a B-1 business visa, he later stated that he did not know what type of visa application the company made for him.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In the present case, the applicant has failed to meet his burden of demonstrating that he did not know the visa he presented at the time of his entry to the United States was fraudulent. The purpose of his B-1 business visa was to attend meetings of the Federal Reserve Bank of New York, yet the applicant clearly indicated that he had no intention of attending any meetings in New York, but proceeded directly to Chicago upon his arrival. It has not been established, by a preponderance of the evidence, that the applicant did not procure a B-1 business visa and admission to the United States by fraud or misrepresentation. The AAO thus concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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 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 v. I.N.S.*, 138 F.3d 1292, 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.

We initially found that the record did not show that the applicant’s spouse’s mental health condition was so serious that it was interfering with her ability to carry out her daily activities or otherwise amounted to hardship beyond the common results of inadmissibility of a loved one, and that the evidence in the record was insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant’s absence.

In our decision of November 25, 2013, we found that the psychological evaluation submitted to the record indicated that the applicant’s spouse lost her job as a dental assistant due to declining vision and difficulty dealing with stressful, high-pressure situations, that she was only working part-time, and was considering filing for bankruptcy. The psychologist stated that the applicant’s spouse has lost 40 pound due to ongoing stress, depression, anxiety and fear of the unknown and was taking medications for her condition. The evidence showed that the applicant’s spouse was diagnosed with Major Depressive Disorder and Anxiety, was prescribed with Lexapro and Alprazolam, and was psychotherapy treatment. We further found that evidence establishing that the applicant’s spouse was in two foreclosure proceedings, and that documentation establishing the applicant’s current financial contributions to the household was submitted, indicating financial hardship to the applicant’s spouse if the waiver application was not approved.

We therefore determined that, based on the totality of the circumstances, the applicant established that his spouse would experience extreme hardship were she to remain in the United States while the

applicant relocates abroad as a result of his inadmissibility. *See Decision of the AAO*, dated November 25, 2013.

In regard to relocation, we previously found on motion that the record did not support the applicant's former counsel's contention that the applicant's spouse would not be allowed to stay in Ukraine for significant periods of time and that the applicant's wife was at risk due to crime if she relocated to Ukraine, and concluded that the applicant had not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Ukraine to reside with the applicant. The applicant previously submitted documentation on motion consisting of general articles regarding Ukraine that failed to establish the specific hardships the applicant's spouse, a native of Ukraine, would experience were she to return to Ukraine to reside with the applicant as a result of his inadmissibility.

On the current motion, counsel contends that the applicant's spouse will suffer extreme hardship if she leaves the United States and joins the applicant in Ukraine. Counsel states that the applicant has family ties to the United States, including a U.S. citizen daughter and another child who has been granted cancellation of removal by an immigration judge. Counsel states the applicant's spouse will fear physical harm, assault, social deprivation, and isolation in Ukraine, and that relocation to Ukraine will have a financial impact on her.

The record indicates that the applicant's spouse has resided in the United States for more than 20 years and supports the assertion that she has strong family ties in the United States. We further note that Ukraine is currently experiencing civil strife. The U.S. Department of State has issued a travel warning for Ukraine, which warns U.S. citizens to defer all travel to the eastern regions of [REDACTED] and [REDACTED] and to the [REDACTED] and the southern city of [REDACTED]. The travel warning also states that the situation in Ukraine is unpredictable and could change quickly. *See Travel Warning-Ukraine, U.S. Department of State*, dated June 5, 2014.

Thus, due to her length of residence and extensive family ties in the United States and her concerns about her safety in Ukraine, it has been established that the applicant's spouse would suffer hardship beyond the common results of removal if she were to relocate to Ukraine to reside with him.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of*

Mendez-Moralez, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

In evaluating whether . . . 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). We 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 favorable factors in this matter are the extreme hardships to his U.S. citizen spouse if the applicant's waiver is not approved; the applicant's spouse's strong family ties in the United States; the fact that the applicant resided in the United States approximately 16 years, with an apparent lack

of any criminal record; and letters of reference written on behalf of the applicant. The unfavorable factors in this matter are the applicant's misrepresentation to procure a B-1 visa and admission to the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 motion is granted, the prior decisions of the AAO are withdrawn, and the appeal is sustained.