



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OFFICE: PORTLAND, OREGON

JUL 23 2014

FILE:

consolidated therein)

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon and the matter is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant, a native of the former Yugoslavia and citizen of Kosovo and Slovenia, was found inadmissible 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 into the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated September 16, 2013, the Field Office Director concluded that the applicant did not demonstrate that his spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, counsel for the applicant states the applicant's spouse would suffer extreme hardship if the applicant's waiver is denied. Counsel also states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

In support of the waiver application, the record includes, but is not limited to: briefs from counsel; statements from the applicant, his spouse, their family members and friends; documentation concerning the applicant's spouse's mental health; biographical information for the applicant, his spouse, their children, and his spouse's parents; tax returns for the applicant and his spouse; medical records for the applicant's spouse; country-conditions documentation concerning Kosovo; and documentation of the applicant's immigration history. 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.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)). The term “willful” should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). “[C]lear, unequivocal, and convincing evidence” is needed to find an individual inadmissible for a willful misrepresentation of a material fact. See *Kungys*, 485 U.S. at 771-72.

The Field Office Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act because he was admitted to the United States on April 27, 2004 as a B-2 visitor for pleasure, when the record indicates that he had immigrant intent at the time. In a sworn statement dated December 10, 2008, the applicant replied “yes” to the question, “So, you knew when you applied for the visa [on April 27, 2004] that you were planning on staying in the United States permanently?” That question was preceded by the question, “Why didn’t you leave the United States when that visa expired?” to which the applicant answered, “I never went back. I just like it here.”

On appeal, counsel states that the adjudicating officer did not follow proper procedures when obtaining this sworn statement from the applicant and that the Field Office Director abused her discretion by using it to find the applicant inadmissible under section 212(a)(6)(C)(i). Counsel asserts that the officer did not follow the Adjudicator’s Field Manual (AFM) guidelines concerning interview techniques, citing AFM 15.4 (stating that interview proceedings should not be adversarial in nature), 15.6(a) (distinguishing between interviews and interrogations), 15.6(b) (concerning videotape as the ideal format for “most” interviews), and 15.7 (concerning the use of interpreters). Counsel, however, does not offer any support for the claim that, as a result, the “veracity of the evidence” should be doubted and that the use of the applicant’s sworn statement constitutes an abuse of discretion. Moreover, according to the AFM:

The AFM comprehensively details [United States Citizenship and Immigration Services (USCIS)] policies and procedures for adjudicating applications and petitions. USCIS updates the AFM regularly to incorporate new policies and procedures established through statutes, regulations, policy memoranda, or any other pertinent

publications. . . . Important Notice: Nothing in the AFM shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.¹

With the appeal, counsel submits an affidavit from the applicant dated November 14, 2013, in which the applicant states that he has entered the United States twice in his life; he last entered the United States on April 27, 2004 as a B-2 nonimmigrant; and he “did not have the intent of remaining in the United States permanently” at that time. The record, however, indicates that the applicant was admitted to the United States on three occasions: April 27, 2004, March 19, 2001, and October 30, 2000.²

In the same affidavit, the applicant states that his knowledge of the English language in 2008 was limited and he did not clearly understand the questions asked of him at the 2008 interview. The AFM at Chapter 15.7 advises immigration officers to request an interpreter when an applicant “exhibits difficulty in speaking and understanding English.” The record, however, does not contain any documentation of the applicant’s English language skills at the time of the interview or show that he did not understand the questions being asked of him in 2008. Nor does the sworn statement appear adversarial in nature. Additionally, the applicant did not provide documentary evidence to demonstrate his nonimmigrant intent at the time of his April 27, 2004 admission, such as proof of his ties outside the United States or documentation about the aunt and uncle that he claimed to be visiting for one month.

The applicant bears the burden of proof in these proceedings and he has not met his burden of establishing that he is not inadmissible. The Field Office Director correctly concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

(1) The Attorney General [now the Secretary of Homeland Security (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

¹ See <http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1.html> (accessed July 29, 2014).

² The record shows that the applicant also attempted to enter the United States on November 28, 2001, but was advised he was inadmissible under section 212(a)(7)(A) of the Act, according to the sworn statement taken by the U.S. inspector at [REDACTED]. The Form I-275, Withdrawal of Application for Admission/Consular Notification narrative describing his refusal, however, states he was found inadmissible under section 212(a)(6)(C)(i) of the Act, for misrepresentations concerning his overstaying during his previous trip to the United States. As the applicant did not accrue over 180 days of unlawful presence after his March 19, 2001 admission, he was not inadmissible under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. §1182(a)(9)(B)(i), as a result of that overstay, so his misrepresentation in November 2001 was not material.

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 on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes a U.S. lawful permanent resident or U.S. citizen spouse or parent of the applicant. The applicant submits evidence concerning the hardship to his U.S. citizen spouse. Hardship to the applicant or his U.S. citizen children will not be separately considered, except as it may affect the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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).

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.

Regarding the hardship of separation, counsel states that the applicant’s spouse faces loss of her home, job, her family’s health insurance, and continued suffering from psychological and physical health problems resulting from stress and other medical conditions if the applicant is not able to remain in the United States. Counsel further states that the Field Office Director did not give individualized consideration to the waiver application but instead focused on “minute procedural issues” and questioned a social worker’s diagnosis that the applicant’s spouse will suffer from extreme hardship. Counsel asserts that adjudicators must presume a medical professional’s diagnosis is valid, “in the absence of significant discrepancies,” citing “AFM Chapter 72.2 (d) (5) and Appendix 72-13 (AFM Update AD06-09.)” That chapter of the AFM has been superseded by the USCIS Policy Manual and addresses procedures concerning the review of medical evidence and reports during the naturalization process. Although the social worker’s professional opinion as to the issues within her areas of expertise will be given full and fair consideration, a determination that an applicant’s family member will suffer extreme hardship as legally required by Section 212(i) of the Act is not within the area of discipline of a private social worker.

In a letter dated November 11, 2013, the social worker who initially evaluated the applicant’s spouse in May 2012 states that she has met with the applicant’s spouse on several occasions and that the applicant’s spouse “continues to experience anxiety and depression” and her condition “has exacerbated” as a result of the applicant’s “pending departure from the United States.” She also states that the applicant’s spouse “is currently experiencing difficulties focusing and concentrating, is irritable, emotional, feels fatigued, and appears to be hopeless.” The applicant’s spouse’s mental health will be taken into consideration along with the other hardships presented.

Concerning financial hardship, the social worker states in her November 11, 2013, letter that the applicant and his spouse are experiencing financial difficulties and cannot afford to pay for their daughter to attend preschool and that the applicant's spouse worries how she will provide for their children as a single parent. An undated letter from the applicant's employer states that he has been employed since August 11, 2008, and would be eligible for health benefits on June 1, 2009. The record does not make clear whether the applicant is still employed by the same employer. The last indication in the record of the applicant's employment is the couple's 2010 federal income tax returns, showing that the applicant's spouse reported an income of \$27,211. The record does not contain a new employment letter, pay stubs, or W-2 forms. The applicant's spouse states that she has been unemployed since her marriage in 2008. The record also lacks evidence of the cost of preschool for their daughter and other household expenses. Counsel states that the applicant's spouse would face the "probable loss of [her home]" but provides no evidence of the applicant's spouse's home ownership. Without documentation concerning the applicant's spouse's financial situation, it is not possible to determine the degree of financial hardship that she would experience as a result of her separation from the applicant. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel indicates on appeal that he submits new evidence concerning the applicant's spouse's medical condition, but the most current documentation in the record concerning the applicant's spouse's medical condition is dated July 2, 2012, concerning her follow-up care for a surgical wound infection that she apparently suffered after her surgery to remove a cyst. The record does not indicate her current condition, her need for additional follow-up care or the applicant's role in assisting her spouse with any medical conditions, aside from the social worker's letter concerning her mental health mentioned above. Although the applicant's spouse states that she would lose her health-care coverage if the applicant were not able to remain in the United States, the record lacks adequate evidence of her present health-care coverage and the source of that coverage. The record contains a copy of the applicant's spouse's bills from [REDACTED] in 2012 that indicate payment for her surgery by [REDACTED] but this documentation does not establish that the applicant's spouse relies on the applicant for health insurance.

Additionally, the record indicates that the applicant's spouse has resided in the United States since 1999 and is presently 28 years old. The applicant's spouse reported to the social worker, as indicated in her May 19, 2012 assessment, that she graduated from high school in the United States. The record also indicates that the applicant's spouse's parents are U.S. citizens and reside

at the same address as the applicant and his spouse. There is no indication in the record of the extent to which she could rely on her parents to assist her with childcare, were she to obtain employment in the absence of the applicant.

The documentation is insufficient to establish the physical and financial hardship that the applicant's spouse would experience if separated from the applicant. As a result, although the record establishes that the applicant's spouse will experience mental and emotional hardship as a result of separation from the applicant, the record does not establish that the hardships the applicant's spouse faces as a result of separation from the applicant, considered in the aggregate, rise to the level of extreme.

Concerning the hardship that the applicant's spouse would face if she were to relocate to her native Kosovo with the applicant, counsel states that the applicant's spouse would face a threat to her safety in that country. Counsel also indicates that the applicant's spouse would lose the home that she owns, her job, her health insurance, and she would continue to suffer from psychological and other illnesses. The record, however, does not contain documentation of the applicant's spouse's home ownership or employment. The applicant's spouse states that she has been unemployed since marrying the applicant in 2008, and the social worker reports in her assessment that the applicant and her spouse rent their place of residence. Furthermore, the record does not contain current evidence of the applicant's spouse's health condition, health insurance or the source of that insurance. Concerning the applicant's spouse's mental health, the record contains documentation that the applicant's spouse has been assessed by a social worker who indicates that the "family will be in danger" in Kosovo without explaining the information she used to make this determination. The U.S. Department of State, Bureau of Consular Affairs, indicates that "the overall security situation has improved," in Kosovo but that "inter-ethnic tensions and sporadic incidents of violence continue to occur." U.S. Department of State, Bureau of Consular Affairs, Kosovo: Quick Facts, <http://travel.state.gov/content/passports/english/country/kosovo.html> (last visited July 15, 2014). In her assessment dated May 19, 2012, the social worker indicates that the applicant's spouse expressed concerns about returning to Kosovo due to the low wages there as well as difficulties obtaining education and medical care for their daughters because their daughters are U.S. citizens. She also expressed concerns about ongoing difficulties between Kosovo and Serbia. Neither counsel nor the applicant's spouse explains why the applicant's spouse believes that she and her family will be in danger in Kosovo. Even were the applicant's spouse to show that she would suffer extreme hardship if she were to relocate to Kosovo, the applicant has not addressed what hardship, if any his spouse would suffer if she were to relocate with him instead to Slovenia, where he is a citizen. No documentation was provided to show why the applicant's spouse would suffer extreme hardship were she to relocate to Slovenia.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families,

in specifically limiting the availability of a waiver of inadmissibility to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law requires that the hardship, to meet the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, 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.