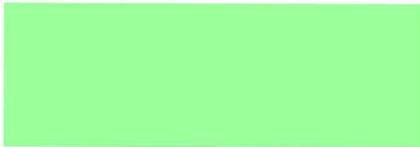


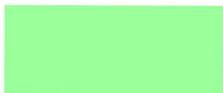
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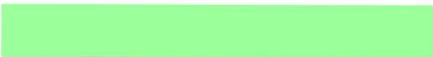
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



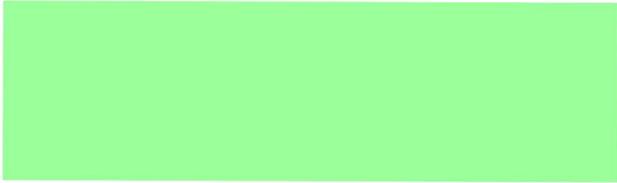
U.S. Citizenship  
and Immigration  
Services



Date: **JUN 09 2014** Office: WASHINGTON FIELD OFFICE 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:  


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 Washington Field Office Director 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 Mongolia who was found to be inadmissible to the United States under 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 is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 27, 2013.

On appeal counsel for the applicant's attorney contends in the Notice of Appeal (Form I-290B) that USCIS misapplied the law and ignored evidence by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief. The record contains statements from the applicant, her spouse and son; a psychological evaluation of the spouse; medical prescription documentation for the spouse; financial documentation; an affidavit on country conditions from an expert on Mongolia; and letters of support from family and friends of the applicant's spouse. 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.

Section 212(i) of the Act provides that:

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.

The record reflects that the applicant entered the United States in June 2002 using a passport and B1/B2 visa issued under a name other than her own and in September 2002 filed an Application To Extend/Change Nonimmigrant Status (Form I-539) under the same false name, with that application

approved. The applicant was thus found inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. In her affidavit the applicant states that she had twice been denied a visa to the United States, thus applied for visa under an assumed name. Counsel for the applicant has not contested the finding that the applicant is inadmissible for misrepresentation.

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 spouse 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-Moralez*, 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. *Salcido-Salcido v. INS*, 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.

Counsel asserts that the applicant’s spouse is diagnosed with Attention Deficit Hyperactivity Disorder (AD/HD) that is controlled through medication and a structured environment that includes the support of the applicant and a stable job. The applicant’s spouse states that being with the applicant allows him to focus and that without her he would be unable to concentrate. The psychological evaluation states that the applicant was the answer to the spouse’s isolation and that if separated it would be difficult for him to find another relationship. It states that their marriage is essential to the spouse’s ability to function well in society, and that without the applicant the spouse would revert to withdrawal, distrust and passivity. The evaluation notes the spouse’s history of AD/HD and academic struggles from an early age through college, and that he learned to utilize medication to eventually attend to tasks and succeed at school and later at work. The evaluation states that a supportive structure compensated for his cognitive and psychological struggles and helped make him successful.

Letters from family and friends describe the applicant as having a stabilizing effect on the spouse, making him happy and connected to the family and the future. They describe the spouse as now managing and having found an environment that suits his strengths. The spouse’s mother states that he has struggled to find a place he belongs and his father describes academic struggles due to AD/HD, with transformational changes through counseling and medication. The father also states that the applicant has made her spouse more focused, committed, accountable and responsible.

The record fails to establish that the applicant’s spouse will suffer extreme hardship as a consequence of being separated from the applicant. The letters of support and psychological evaluation provided do not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. It is recognized that the applicant has a positive influence on her spouse, but the record also shows that

the applicant's spouse has a strong support structure of family and friends. The applicant's spouse will endure hardship as a result of separation from the applicant, however his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The record does establish, however, that the applicant's spouse would experience extreme hardship if he were to relocate to Mongolia. Counsel states that in Mongolia the applicant's spouse would be on the periphery of society because of his appearance and inability to speak the language, would find a lack employment prospects, would be unable to tolerate the climate or diet, and would be isolated from his family in the United States. In her affidavit the applicant states that her spouse does not know the Mongolian language and would have little opportunity there. She also states that the parents of her spouse depend on his care, and that he is close to his family and friends.

In his affidavit the spouse states that by relocating to Mongolia he would lose his immediate and extended family, friends of 30 years, and a career that he established over years. He states that he lives with his mother and near his father and step mother, who all have health problems and need his care. He states that he is unable to speak the Mongolian language, which would intensify his isolation, and cannot tolerate the weather and diet. He states that the Mongolian culture is alien to him and he would be an obvious outsider there due to his appearance. The spouse states that the health care system in Mongolia is inferior to the United States and that his medications for AD/HD are not available. He states that relocating to Mongolia would do irreparable financial harm as there are few job prospects that would utilize his skills and experience in project management for software development, and that in researching Mongolia the only positions he found not requiring the Mongolian language were positions for English teachers or for engineers in the mining industry, for which he has no experience and is not qualified.

The psychological evaluation states that if the spouse were to go to Mongolia he would lose the supportive structure of his family and employment that suits his abilities. It states that the spouse would not learn the Mongolian language because of his learning disabilities and would risk being unable to obtain prescription medication to control his AD/HD while being far from family and medical supervision.

An affidavit from an expert on Mongolia states that the spouse would have difficulty finding employment at his age with no Mongolian language skills or experience in the culture. It states that much of the Mongolian work force is in fields not suitable for the spouse's background, that employment for foreigners as English teachers requires a teaching background that the spouse does not possess, and that work for foreigners in the mining sector also requires experience he does not possess. The affidavit states that because of his appearance the applicant's spouse could be the target of crime. The affidavit also cites studies of low quality health care and limited training of physicians on essential drug use. According to the U.S. Department of State, "Medical facilities in Mongolia are very limited and do not meet most Western standards, especially for emergency health

care. Many brand-name Western medicines are unavailable.” <http://travel.state.gov> October 31, 2013.

The record establishes that the applicant’s U.S. citizen spouse was born in the United States and has no ties to Mongolia. He would have to leave his close-knit family and his community while being concerned about his financial well-being, given and the limited employment opportunities in Mongolia, and his access to prescription medications. It has thus been established that the applicant’s spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As the record does not establish 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.