



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 24 2014

OFFICE: INDIANAPOLIS

IN RE:

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Indianapolis, Indiana denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Kazakhstan and citizen of Russia 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 by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 5, 2013.

On appeal, counsel for the applicant asserts that the applicant has demonstrated that her spouse would suffer emotional, financial, and familial hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse could not bring their children to reside with them in Russia due to language and medical issues, and would also leave behind his family ties and employment for a country that he previously fled.

In support of the waiver application and appeal, the applicant submitted letters from her spouse, psychological and school documentation concerning the applicant's son, psychological documentation concerning the applicant's family, medical documentation concerning the applicant's spouse's father, identity documents, letters of employment, a letter from the applicant's spouse's parents and subsequent revocation letter from the applicant's spouse's father, 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...

The record reflects that the applicant procured admission to the United States on April 1, 2002 by presenting a passport belonging to another individual. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring an immigration benefit through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-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 (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 record reflects that the applicant is a 34-year-old native of Kazakhstan and citizen of Russia. The applicant’s spouse is a 35-year-old native of Russia and citizen of the United States. The applicant is currently residing with her spouse and children in [REDACTED]

Counsel for the applicant asserts that the applicant’s U.S. citizen spouse could not provide their two children, including a son, [REDACTED] presenting symptoms characteristic of autism spectrum disorder, with the appropriate care without the applicant. Counsel further contends that the applicant’s spouse could not provide his son with recommended treatment for his autism spectrum disorder symptoms without reducing or terminating his employment due to the time commitment involved in the child’s treatment and care. *See Brief in Support of Appeal*, dated August 29, 2013. In his own declaration, the applicant’s spouse details his son’s developmental issues and maintains that the applicant plays a critical role in the child’s daily care and progress. He states that not a day goes by that his wife does not work with their son using skills she learned over the years to rehabilitate any mental functions and motor skills that can be salvaged. *See Letter from* [REDACTED]

The record contains a letter from [REDACTED] a clinical child psychologist. Dr. [REDACTED] states that the applicant’s child, [REDACTED], is displaying many characteristics of an Autism Spectrum Disorder including diminished interest in social play, misinterpretation of others’

behavior and communication, poor understanding of unspoken social rules, sensory sensitivities and excessive preoccupation with certain interests. [REDACTED] recommends that [REDACTED] have a consultation with a child psychiatrist to consider medication options to treat his thought disorder. [REDACTED] also recommends that the applicant's son continue involvement in special education and consultation with a school-based autism specialist, speech therapy, participation in a social skills group, and possible participation in an applied behavioral analysis program for autistic children. [REDACTED] concludes that it would be catastrophic for the applicant's two children if the applicant were separated from the family. *See Letter from [REDACTED] Clinical Child Psychologist*, dated August 26, 2013. The record also contains an assessment from a child psychologist, [REDACTED], indicating that one of the most important factors in treatment success is a consistent parent or caregiver using specific approaches every day, in addition to school and outpatient speech and occupational therapy. *See Psychological Assessment of [REDACTED], Psy.D.*, dated December 29, 2010. A letter has also been provided from [REDACTED], a licensed clinical social worker. [REDACTED] maintains that if the applicant relocates abroad, the impact on her spouse will be devastating. [REDACTED] contends that the children have been in the full time care of the applicant since birth and are deeply attached and dependent on her and long-term separation from her would cause them, and by extension, the applicant's spouse, extreme hardship. [REDACTED] also states that without his wife, the applicant's spouse would have to attend to his children's needs by himself and given the long hours that he works, such a predicament would cause him hardship. *See Letter from [REDACTED] [REDACTED]* dated January 15, 2013. Based on a totality of the circumstances, most notably Adriel's diagnosis and extensive treatment plan, the AAO finds that applicant's spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts that he cannot relocate to Russia because he and his family previously fled from Russia 20 years ago due to anti-Semitism. As a result, they were granted refugee status in the United States. The applicant's spouse also asserts that leaving the United States would mean leaving his closest relatives, who he makes time for at least once a month, including his parents, sister, aunts, uncles and cousins. The applicant's spouse contends that he has no known relatives remaining in Russia and that with his father's age and deteriorating health, he expects to care for his parents in the future. *Supra* at 4-5. Counsel further maintains that the applicant's spouse's employment is highly specialized and his skills would not easily transfer to Russia. Counsel also references the problematic health care conditions in Russia, making it unlikely that [REDACTED] could receive the care he needs for his disorder. *Supra* at 11-12. Based on the applicant's spouse's extensive and long-term family, community and employment ties to the United States and the need for his son, Adriel, to continue treatment with the professionals familiar with his diagnosis and treatment plan, the applicant has established that her spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to relocate to Russia, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's community and family ties; home and property ownership; the payment of taxes; the apparent lack of a criminal record; and the passage of more than a decade since the applicant's fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation as outlined in detail above and unlawful presence in the United States.

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NON-PRECEDENT DECISION

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Although the violations committed by the applicant are serious in nature, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 appeal is sustained.