



(b)(6)

DATE: **MAY 08 2014** Office: DETROIT 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. 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 Field Office Director, Detroit, Michigan, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO granted the motion to reopen and reconsider and affirmed the underlying decision. The applicant has filed a new motion, which is now before the AAO. The motion will be granted and the underlying decision affirmed.

The applicant is a native and citizen of Macedonia (formerly Yugoslavia) 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 a visa and admission to the United States by fraud or misrepresentation. The applicant contests the inadmissibility, but alternatively seeks a waiver of inadmissibility in order to remain in the United States.

The field office director found the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, October 12, 2012. In dismissing the applicant's appeal, the AAO concluded the record evidence did not show the requisite extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, May 15, 2013. On the initial motion, the AAO found without merit counsel's assertion that the applicant is a permanent resident whose status was never rescinded, and again concluded he had not shown extreme hardship to a qualifying relative. *Decision of AAO (MTR)*, October 3, 2013.

On a second motion, counsel continues to assert that the applicant remains a permanent resident, but also claims the AAO failed to properly weigh the hardship evidence. Counsel provides a brief and numerous exhibits, including evidence and documentation already included in the record, as well as updated hardship and support statements; follow-up neurologist statements; financial documents, including job letters, a termination letter, and business incorporation filings; proof of insurance; and country condition information. This evidence supplements extensive documentation provided with previous applications and petitions. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

The [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 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 [...].

The record indicates that the applicant claimed on his immigrant visa application dated November 20, 1980 to be single, despite having married on September 14, 1979. He continued to misrepresent his marital status to a Consular Officer on February 24, 1981 in order to obtain a visa,¹ and was admitted to the United States on March 20, 1981 using the fraudulently obtained immigrant visa. The fraud was detected when the applicant petitioned for his wife on June 9, 1982 and he departed the country on or about August 24, 1982. He was placed in deportation proceedings for having entered the United States without a valid immigrant visa because he was married when he entered as the unmarried son of an LPR, but he failed to attend his scheduled hearing in 1983. He returned to the United States in 1996 as a B2 nonimmigrant visitor and has not departed since that time. After renewing his green card in 2005, he filed a naturalization application which led to discovery of the original 1981 fraud and realization the green card had been erroneously renewed.

Although case law establishes that no formal proceeding is required regarding LPR status that has been abandoned, counsel provides no legal authority showing that the applicant retains the permanent residency he acquired upon immigrating in 1981. The record shows that the applicant was not ordered deported because he had already departed the United States. He remained outside the country for 14 years, thus abandoning his LPR status. *See U.S. v. Yakou*, 428 F.3d 241 (D.C. Cir. 2005) (“[I]n adjudicating an individual’s LPR status, the BIA has expressed its understanding that the status changes at the point a LPR engages in an abandoning act, like departing the United States for more than a ‘temporary visit abroad,’ [citation omitted], not at the point when the BIA makes a determination of the person’s status in a removal proceeding or when the individual files Form I-407 [Abandonment of Lawful Permanent Resident Status].”); *see also Matter of Kane*, 15 I&N Dec. 258, 265 (BIA 1975) (“If any of her absences have been other than temporary in nature, she has lost the status of lawfully admitted immigrant and would not now have that status.”) and *Matter of Montero*, 15 I&N Dec. 399, 401 (BIA 1973) (LPR lost status at point she departed the United States with no fixed intent to return). *Yakou* and subsequent cases make clear that “‘termination’ of LPR status under 8 C.F.R. § 1.1(p) is only a subset of the ‘change’ of such status mentioned in the INA, 8 U.S.C. § 1101(a)(20), and does not address the totality of the means by which [his] LPR status could change.” *Id.* at 250; *see Fayad v. Keller*, 2011 WL 884042 (N.D. Cal 2011) and *Shyjak v. BCIS*, 579 F.Supp.2d 900 (W.D. MI 2008).

Counsel asserts the 2005 renewal of the applicant’s green card is evidence of LPR status and also claims that section 246 of the Act, 8 U.S.C. 1256, requires that rescission be initiated within five years of that status being granted. However, counsel makes no showing that rescission is the only means whereby an immigrant may lose permanent residency and thus fails to demonstrate that the applicant did not relinquish his status by departing the country for 14 years.² Absent authority contrary to the cases noted above, the applicant has failed to carry his burden of showing that what was clearly a departure for more than a temporary visit abroad was not an abandoning act. Further, the record reflects that his green card was issued in error, as the applicant was present here since

¹ As there is no immigrant visa category for the married son of a lawful permanent resident, the applicant’s marital status disqualified him from eligibility for a visa, which would not have been issued without his misrepresentation.

² Counsel recognizes the significance of the length of time an LPR spends overseas, which can cause loss of lawful permanent status by abandonment. *See Brief* at 7 and 8 (“to keep her legal permanent resident status[... the applicant’s wife] should not be out of the United States for more than sixth [sic] months.”).

1996 by virtue of admission in B2, nonimmigrant status, rather than after being readmitted as a returning resident. Having lost LPR status by abandonment, the applicant again seeks to acquire permanent residence, this time as the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his son. Approval of his Application to Register Permanent Residence or Adjust Status (Form I-485) requires waiver of the inadmissibility for fraud.

A waiver of inadmissibility under section 212(i) 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is a lawful permanent resident and the only qualifying relative in this case.³ If extreme hardship 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 clear that "[r]elevant factors, though not extreme in themselves, must be considered

³ As the applicant is not, with respect to his son, "the spouse, son, or daughter" of a U.S. citizen," but rather the *parent* of a citizen, his son is not a qualifying relative under section 212(i) of the Act.

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. 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.

Regarding relocation, the applicant contends that his wife would experience extreme hardship if she returned to her native Macedonia. The qualifying relative states that all her relatives, except for an adult daughter, have left Macedonia. The applicant offers 2012 and 2013 neurological examinations of his wife to support claims that living in the country she left nine years ago would cause her extreme hardship. He provides a document stating that his wife owns no taxable property in Macedonia to show they would have no place to live in Macedonia, as well as her daughter’s statement that she cannot accommodate them due to the small size of her apartment. The record reflects that the applicant’s wife is 59 years old, has been a lawful permanent resident since June 2004, and, according to her husband, had not worked since 2007 until returning to the workforce from April 2013 to November 2013. Her claims to suffer from high blood pressure and rapid heartbeat, as well as deteriorating health remain unsupported by the medical documentation on record, including statements in which the examining doctor found her to have normal vital signs and no motor impairment, but prescribed medication for depression/stress. See Neurological Evaluations, October 25, 2012, April 1, 2013, and November 11, 2013. Her job termination letter states she was discharged for unsatisfactory performance. There is little evidence on record showing the applicant’s wife has established ties to this country and she offers no explanation why, despite intending to bring her daughter (and family) to the United States, she waited until 2013 to apply for the citizenship status required before she can file an immigrant petition on her behalf. Other than her 32-year-old U.S. citizen son who lives at home, the record reflects limited family ties of the applicant’s wife to this country, while indicating that she has unspecified distant relatives in Macedonia, in addition to her daughter’s family.

The evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Macedonia. Country condition information indicates that Macedonia is a democracy with an improving economy. See *Macedonia–Country Specific Information*, U.S. Department of State (DOS), June 7, 2013. The DOS has issued no recent travel advisories for the country, and there is no evidence the applicant's wife has any conditions for which treatment is unavailable. If she returns to her native country to avoid being separated from her husband due to his inadmissibility, she will be moving closer to her daughter. Her adult son need not accompany her, and the record indicates she has no other children in the United States. As she is not employed, relocating would not cause a loss of employment. There is no evidence that she was unemployed in Macedonia prior to emigrating in 2004 at the age of 50. The record reflects that she lived overseas with the applicant from 1982 to 1996, and there is no indication they experienced financial difficulties or were unable to work. Although counsel provides information regarding high unemployment in that country, there is no evidence that the applicant and his wife would be unable to resume their previous lifestyle, this time without the financial burden of two children. Regarding the consequences for their U.S. home ownership, the record shows that their son lives at home with them, while operating a small trucking business. The applicant provides no documentation of his son's income or contribution toward household expenses, including the mortgage. Although counsel notes that relocation may involve forfeiture of permanent residency, this impact is only one factor to be weighed in evaluating her hardship. While we are not insensitive that such an overseas move would disrupt the qualifying relative's life and future plans to help her daughter immigrate, the evidence does not establish that it represents a hardship that rises to the level of "extreme."

Regarding separation, the applicant's wife contends that thoughts of losing her husband have caused her emotional and physical hardship. Based on the patient's reported symptoms, including fatigue, insomnia, and poor concentration, a neurologist diagnosed her with depression and stress due to the applicant's immigration issues. The record reflects that he prescribed two anti-depressant medications and recommends ongoing monitoring of her psychiatric symptoms, but gives no prognosis. See *Neurological Evaluations*. Insurance cards naming only the applicant are insufficient support for the claim that she receives medical insurance benefits through the applicant's employment that would be lost with his departure, and the record fails to state the uninsured costs she would incur. Her neurologist notes that she is able to carry out normal daily activities despite generalized pain from a 1989 car accident that she treats with nonprescription medication, and there is no evidence she is receiving ongoing medical care (except for three neurologist visits since 2012). There is no indication that she would be unable to travel abroad to visit her husband in order to lessen the impact of separation, and the record establishes they lived apart from his 1996 U.S. return until she immigrated in 2004.

Regarding the financial hardship claim, the record reflects that the applicant's wife held a factory job until 2007, but the applicant provides no documentation of her employment or earnings history. The record shows she returned to work for nine months in 2013, but there is no indication of her income beyond an employment letter stating her hourly compensation rate. Tax returns show the couple's joint earnings ranged up to \$50,000 in 2008, but had declined to \$33,000 in 2012. The record establishes the applicant has worked as a welder for the same U.S. employer for 17 years, but is silent regarding whether he received his training in Macedonia or performed similar work there. As noted above, there is no indication the applicant was not gainfully employed from 1982 to 1996, or

that he would be unable to become employed again. There is no documentation of the education, training, or employment history of the qualifying relative. Although counsel has provided information regarding Macedonia's unemployment rate, the record does not establish the applicant would be unable to find employment and support himself there.⁴ Further, the record shows that the qualifying relative's son is a working adult residing with his parents who reported earnings of nearly \$23,000 in 2007 and almost \$15,000 in 2008.

The applicant has failed to establish that his wife is unable to find work to support herself in his absence, that such absence would impose on her any costs of supporting him, or that he would be unable to continue assisting her with living expenses. Further, we note that while the record indicates their son is employed and earns income while sharing a home with his parents, it does not indicate his financial contribution toward household costs.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Therefore, the applicant has not met his burden of establishing his wife would suffer hardship beyond the common results of removal or inadmissibility.

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 U.S. resident spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision dismissing the appeal is affirmed.

⁴ We note that current information shows the official unemployment rate declining from 31% in 2012 to 30% in 2013 and states it "may be overstated based on the existence of an extensive gray market, estimated to be between 20% and 45% of GDP, that is not captured by official statistics." *The World Factbook—Macedonia*, Central Intelligence Agency, February 26, 2014.