



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE:

Office: SANTA ANA, CA

FILE: [Redacted]

**MAY 13 2014**

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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, Santa Ana, California, 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 Canada who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, filed on April 5, 2013 and received by the AAO on January 2, 2014, counsel contends that the applicant established extreme hardship, particularly considering his wife's depression and the fact that she is prevented by court order from moving her children from a prior marriage outside of California.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on August 27, 2003; a declaration and a letter from the applicant; copies of medical records; copies of tax records, bills, and other financial documents; a letter from a counselor; letters from Ms. [REDACTED]'s children and copies of report cards; a letter from Ms. [REDACTED]'s employer; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes in his sworn statement, that he entered the United States numerous times as a visitor when he had, in fact, been residing and working in the United States for approximately ten years. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to procure an immigration benefit. Counsel does not contest the finding of inadmissibility on appeal.

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*, 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.

In this case, the applicant's wife, Ms. [REDACTED] states that she has children who are fourteen and seventeen years old from a prior marriage who live with her, and that she has another child who primarily lives with his father. Ms. [REDACTED] contends she suffers from major depressive disorder for which she has been receiving treatment since January 2011, was diagnosed with anxiety in 2010, and takes anti-depressants. She claims she often suffers from horrible side effects, becomes immobilized to the extent she cannot get up to go to work or care for her children, and her husband steps up and takes responsibility for caring for the children. She contends she cannot imagine life without her husband and that he has always been there for her through her episodes of depression. In addition, she states her husband was her source of strength when she was hospitalized in January 2011 due to pneumonia and sepsis. Ms. [REDACTED] states that she cannot imagine being a single parent again raising her teenage children alone. Furthermore, Ms. [REDACTED] states she cannot relocate to Canada to be with her husband because she cannot take her children out of the United States. She also states she is enrolled in a nursing program and would lose her job and all of its benefits. She states she has no family in Canada and does not know anybody there. According to Ms. [REDACTED] both of her parents live in California, her mother suffers from congestive heart failure, diabetes, and hypertension, and she is her mother's caretaker. She contends that relocating to Canada would mean leaving her children as well as her parents.

After a careful review of the entire record, there is insufficient evidence to show that the applicant's wife, Ms. [REDACTED] has suffered or will suffer extreme hardship if the applicant's waiver application were denied. If Ms. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The record shows that the applicant and his wife have lived apart for significant periods of time. According to the applicant's sworn statement taken during his Form I-130 interview in February 2007, the couple had been separated between one and 1½ years with Ms. [REDACTED] living in her own apartment while the applicant lived with his brother's family. In addition, according to tax returns in the record, in 2010 and 2011, Ms. [REDACTED] earned almost \$40,000 in wages and indicated her marital status on the Earned Income Credit Due Diligence form as "[m]arried but lived apart from spouse during the last 6 months of the year." Therefore, the applicant and his spouse have been voluntarily separated for significant periods of time. Regarding Ms. [REDACTED]'s depression, there is no evidence, such as a letter from a mental health professional, to corroborate her contention that she has been receiving treatment for major depressive disorder since January 2011. Rather, the record contains a letter from 2007 stating only that she was in counseling from April 2004 through January 2006 due to depression related to her relationship with her husband. *Letter from* [REDACTED]

dated December 21, 2007. This letter is brief (consisting of two sentences), only references therapy from April 2004 to January 2006, and fails to show Ms. [REDACTED] required or received mental health services for the preceding several years. Without more updated and detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical or psychological condition, or the treatment and assistance needed. To the extent the record contains copies of medical records corroborating the claim that Ms. [REDACTED] was hospitalized in January 2011 due to pneumonia and sepsis, there is no indication in the record she continues to have any medical problems that require her husband's assistance. Although the AAO is sympathetic to the family's circumstances and recognizes the challenges of being a single parent, the record does not show that any hardship Ms. [REDACTED] may experience is beyond that normally experienced by others in the same situation. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Ms. [REDACTED] remains in the United States, the hardship she will experience would be extreme, unique, or atypical compared to others separated from a spouse.

With respect to relocating to Canada to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. Regarding Ms. [REDACTED]'s claim that her two children who live with her cannot leave the United States, there is no evidence in the record to corroborate this claim. Rather, the record contains a copy of the divorce decree addressing custody of the child who primarily does *not* live with Ms. [REDACTED]. In addition, there is no evidence in the record showing Ms. [REDACTED] is enrolled in a nursing program as she claims. Similarly, there is no letter in the record from either of Ms. [REDACTED]'s parents and according to her sworn statement from her Form I-130 interview in February 2007, she had not spoken to her father in almost a year. There is no evidence showing that her mother has any medical conditions, and no evidence showing she is her mother's caretaker. In sum, there is insufficient evidence in the record to show that Ms. [REDACTED]'s relocation to Canada would be any more difficult than would normally be expected under the circumstances. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's wife would experience if she relocated to Canada amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.