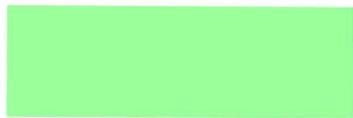


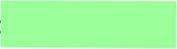
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **NOV 06 2014** OFFICE: SEATTLE

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 Field Office Director, Seattle, Washington, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is again before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of the Netherlands who was found 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 seeking to procure admission to the United States by fraud or willful misrepresentation. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, February 11, 2013. On appeal, the AAO agreed that the evidence was insufficient to establish extreme hardship to a qualifying relative and dismissed the appeal. *Decision of the AAO*, September 5, 2013. The applicant filed a motion claiming that new facts and medical evidence remedied prior evidentiary shortcomings. We granted the motion, found the updated record remained insufficient to establish extreme hardship, and thus affirmed our previous dismissal. *Decision of AAO*, April 16, 2014.

On a second motion, counsel for the applicant asserts that newly provided documentation, including the 2010 ruling by an Administrative Law Judge and updated earnings information, supports a finding that the applicant's absence would cause extreme hardship to a qualifying relative. The record includes: briefs; supportive and hardship statements; a fee waiver request and approval; financial records; medical, disability, and workers compensation records; country condition reports; birth and marriage certificates; and documents related to removal proceedings. We reviewed and considered the entire record in rendering this decision on the motion.

Section 212(a)(6)(C)(i) of the Act provides:

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 [...].

According to the record, on May 9, 1996, the applicant attempted to procure entry to the United States by presenting to a U.S. immigration inspector the Illinois birth certificate of another person.

She was denied admission and placed in exclusion proceedings, and an Immigration Judge terminated exclusion proceedings on April 24, 1997. There is no record she has departed the country, although she attempted to do so in 2010. Based on the foregoing, the field office director found that she had thereby incurred inadmissibility for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

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. In the present case, the applicant's spouse is the only qualifying relative. 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 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. 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 financial hardship from separation, we confirmed in prior decisions evidentiary deficiencies identified by the field office director, including insufficient documentation in support of the applicant’s claim to be the primary breadwinner of the household. On motion, the applicant now offers the March 26, 2010 decision of a Social Security Administration (SSA) Administrative Law Judge (ALJ) finding the applicant’s husband to have been disabled since January 25, 2009. The ALJ found, however, that her husband’s medical condition was expected to improve and thus recommended a continuing disability review in 24 months. The record reflects he received \$9,947 in 2012 social security disability payments. There is no indication that his disability status was reviewed, or whether he is currently receiving SSA disability benefits, although an SSA letter dated March 25, 2013 states he was receiving such benefits at that time. Documentation shows that in June 2012 he dismissed his appeal of denial of his 2011 workers’ compensation claim.¹

Regarding contributions to household finances, we observed in our decision on the previous motion that a psychological evaluation noted the qualifying relative’s part-time employment for the City of [REDACTED] without providing details. While the record still contains no wage statements regarding this employment, a newly-provided 2014 Form SSA-821-BK shows 2013 earnings of nearly \$21,000 from jobs with two employers, one of which was the City of [REDACTED].² The updated record further reflects that the applicant’s spouse accepted full-time employment in January 2014 as a security officer earning \$20 per hour. Our prior decisions noted a 2012 joint income tax

¹ The record shows that the State of Washington Department of Labor and Industries denied the applicant’s husband’s workers’ compensation claim after an October 2010 medical examination determined an injury to his left knee was not work-related as alleged and his right knee is not injured. Although he claims his payments stopped in December 2010, we note the record contains no documentary evidence showing that he received workers’ compensation benefits before December 2010 or the amount of these payments.

² In addition to \$16,667 from the City of [REDACTED], he earned \$4,164 from the United States Postal Service.

return showing the applicant earned \$9,260 through her employment with [REDACTED] and, although we pointed out there was no evidence of her claimed employment by [REDACTED] the [REDACTED] earnings remain her only documented income. The couple's claim of monthly expenses totaling \$3,191 also remains unsubstantiated. We previously concluded that the evidence was insufficient to show the applicant's departure would make her husband unable to meet his financial obligations. The updated record contains no basis on which to reverse our earlier findings.

Regarding physical hardship, although the applicant has submitted the ALJ's decision finding disability, we note that the record contains no updated medical records establishing his current condition, any related limitations, or the need for special care or treatment. Without documentary evidence demonstrating his current medical condition, prognosis, and treatment, or indicating whether he requires assistance with the activities of daily living, we cannot evaluate the nature or extent of the hardship claimed. The record does not show that the ALJ's suggested disability review was conducted to determine whether medical improvement anticipated in 2010 occurred, but documentation indicates that the applicant's husband worked two jobs in 2013 and accepted different employment for higher income in 2014. There is no evidence that he would be unable to visit the applicant overseas to ease the pain of separation.

Regarding the claimed emotional hardship to her qualifying relative, the applicant offers no new evidence to overcome our finding that the record failed to show the impact on her husband differed from the ordinary or typical consequences of inadmissibility or removal. In 2013, a psychotherapist diagnosed him with anxiety and major depression based on symptoms including insomnia, memory problems, sadness, nervousness, and discomfort in social and work situations. Her report concluded that, without treatment or if his life is altered in any way, the applicant's husband's emotional condition may worsen. [REDACTED] November 8, 2013. There is no documentary evidence that concern for the applicant's immigration status has caused her husband's work performance to decline or that he has suffered any adverse health consequences. The record reflects that he has an extensive support network, including numerous friends who submitted statements in support of the waiver application, three adult children with whom he remains actively engaged, and nine siblings. While we acknowledge the applicant's contention that her husband will experience emotional hardship if he remains in the United States without her, the evidence fails to establish the severity of this hardship or the effects on his daily life.

For these reasons, the cumulative effect of the emotional, physical, and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme or show that, as a result of her absence, he will suffer hardship beyond those problems normally associated with family separation.

On motion, the applicant does not offer any substantial basis for us to revisit prior findings that there is insufficient evidence to show that a qualifying relative would experience extreme hardship by relocating to the Netherlands to continue residing with his wife. Regarding counsel's assertion that the AAO does not explain in its decisions how a long-term resident can make any income in the country nor be supported by his wife, we note that it is entirely the applicant's burden of proving extreme hardship in order to receive a waiver under the Act.

The psychological evaluation reports that the applicant's husband expressed fear and worry about the stress of moving to the Netherlands and notes his concern based on never having lived overseas, culture shock associated with adapting and adjusting to foreign customs, and inability to learn Dutch due to his age.

Regarding these relocation concerns, we note that the list of hardship factors considered by the Board of Immigration Appeals to be common rather than extreme includes economic disadvantage, loss of employment, inability to maintain 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, and *Matter of Pilch*, 21 I&N Dec. 627.

The documentation on record, when considered in its totality, reflects the applicant has not established that her husband will suffer extreme hardship if she is unable to remain in the United States. We recognize that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to her husband as required under the Act.

The applicant has, therefore, failed to demonstrate that the challenges a qualifying relative faces are unusual or rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship, 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 and, accordingly, the prior decision of the AAO will be affirmed.

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