

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **NOV 10 2014**

Office: TAMPA

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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Laos, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse and daughter.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative if she was separated from him, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, February 18, 2014.

On appeal, counsel contests the applicant's inadmissibility for misrepresentation and resubmits the evidence of hardship to the applicant's spouse which was initially submitted with the applicant's Form I-601.

The record includes, but is not limited to, the following documentation: a statement by counsel in support of the Form I-290B, Notice of Appeal or Motion; a letter by the applicant's counsel in support of the applicant's Form I-601; an affidavit from the applicant's spouse; financial documentation; a psychological evaluation of the applicant and her spouse by a licensed psychologist; letters of reference; and country-conditions information on Laos. 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.

The record indicates that the applicant married her current spouse the first time on January 9, 2012. The applicant's current spouse filed Form I-130, Petition for Alien Relative (Form I-130) on March 27, 2012. The Form I-130 application included a divorce document between the applicant and her first husband, which indicated that the applicant was divorced from her first husband on May 3, 2011.

The record shows that on April 16, 2011, the applicant submitted an application for a nonimmigrant visa at the U.S. Consulate in Vientiane, Laos and indicated on that application that she was married. The applicant was interviewed at the U.S. Consulate on May 5, 2011, two days after the date of her purported divorce from her first husband. During the interview, the applicant indicated that she was still married. The applicant entered the United States on May 21, 2011.

To establish eligibility for a nonimmigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

(B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The Foreign Affairs Manual, at 9 FAM 41.31 N3.4, further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

By claiming she was married in her application for a B-1/B-2 visa, the applicant represented that she had a close family tie in Laos. By omitting that she was divorced, she cut off a line of inquiry which was relevant to the applicant's request for a nonimmigrant visa. The Field Office Director therefore found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her nonimmigrant visa application in 2011. *See Decision of the Field Office Director*, February 18, 2014.

The applicant was interviewed at the USCIS Field Office in Tampa, Florida on June 11, 2012. Subsequent to that interview, USCIS learned that the divorce document, dated May [REDACTED] was fraudulent, and informed the applicant and counsel of this fact. On August 1, 2012, the applicant's spouse withdrew the Form I-130. In order to rectify her marital status, the applicant obtained a genuine divorce from her first husband on December [REDACTED]. On March [REDACTED] the applicant obtained a divorce certificate from her current spouse, apparently due to the fact that her marriage to him was invalid as she was still married to her first husband at the time of their marriage. She subsequently remarried her current spouse eight days later, on March [REDACTED]. The applicant's spouse filed a second Form I-130 on April 8, 2013.

On appeal, counsel contends that the applicant did not misrepresent that she was still married to her first husband at the time of her nonimmigrant visa application in 2011. Counsel contends the fact that the May [REDACTED] divorce document was fraudulent indicates that she actually was still married to her first husband at the time of the application.

The record shows that on March 22, 2012 the applicant's spouse filed Form I-130, Petition for Alien Relative (Form I-130) on behalf of the applicant, which included a copy of the [REDACTED] divorce certificate between the applicant and her first husband. In conjunction with the filing of the Form I-130, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, together with Form G-325A, Biographic Information (Form G-325A), stating that she divorced her first husband on May [REDACTED]. Thus, the applicant continued to claim she was divorced from her first husband, and signed the Form G-325A, misrepresenting that she was divorced and therefore eligible to adjust her status. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*,

381 F.3d 143, 145 (3d Cir. 2004). We conclude that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure an immigration benefit through fraud or misrepresentation by falsely claiming to be divorced from her first husband and being eligible to adjust her status based on the marriage to her present spouse. 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 U.S. citizen husband 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. 1993), (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.

On appeal, counsel states that the applicant and her spouse contend that the Field Office Director erred in finding that the applicant had not established that her spouse would suffer extreme hardship if the waiver application is not approved, as there was ample evidence to show the requisite hardship. Counsel refers to the evidence previously submitted to the record with the Form I-601.

The applicant submitted Form I-601 and included a psychological evaluation for her and her spouse. According to the psychologist, the applicant is experiencing an exacerbation of post-stress symptoms associated with having been in a very abusive relationship over the years with her ex-husband, and a fear of returning to Laos. The psychologist provided a diagnosis of post-traumatic stress disorder, chronic, with recent exacerbation. As noted above, hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The psychologist states that the applicant’s spouse talked about his concerns over the applicant being returned to Laos, and how he would experience severe sadness if he was separated from her. The psychologist further states that the

applicant's spouse did not appear to be significantly depressed or unusually anxious. We acknowledge that the applicant's spouse will experience some emotional hardship due to separation from the applicant. However, the evidence in the record does not establish the severity of the hardship and the effects of that hardship on his daily life. The evidence is insufficient to establish that the emotional hardship to the applicant's spouse is beyond the common results of removal if the waiver application is denied. *See Perez v. INS*, 96 F.3d 390 (9th 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 upon deportation).

Counsel states that the applicant will experience hardship if she returns to Laos due to her religious beliefs and her status as a returning resident. As noted above, hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse states he is experiencing fear and stress that the applicant will face danger if she returns to Laos because the government of Laos doesn't like people leaving and then returning, and thinks that people who go to the United States and return are spies for the United States government. As a result, they can possibly be abducted and even murdered. The country-conditions information submitted to the record includes news articles regarding Hmong refugees who were repatriated from Thailand to Laos in 2007. This evidence is not specifically related to the applicant's situation, and there is no evidence in the record to support the contention that the applicant would be treated as a spy if she were to return to Laos.

Counsel contends that the applicant will face dangerous conditions in Laos because of her religious beliefs if she is forced to leave the United States. The record indicates that the applicant resided in Vientiane, Laos prior to coming to the United States in 2011 at the age of 34, and converted to Christianity following her arrival in the United States. In support of the contention that she will face dangerous conditions if she returns, counsel submits articles related to the mistreatment of Christians in Laos. The U.S. Department of State's International Religious Freedom Report for 2013 for Laos states that the "constitution and some laws and policies protect religious freedom; however, enforcement of these laws and policies at the district and local levels was mixed." The Report further indicates that "District and local authorities in some of the country's 17 provinces continued to be suspicious of non-Buddhist or non-animist religious groups and occasionally displayed intolerance for minority religious groups, particularly Protestant groups, whether or not officially recognized." However, there is no indication in the State Department report of religious intolerance in Vientiane, where the applicant previously resided. *See International Religious Freedom Report for 2013, Laos*, U.S. Department of State. The articles submitted to the record by counsel refer to incidents against Christians in rural areas of Laos. As the applicant previously resided in Vientiane, the evidence submitted is not specifically related to the applicant's situation, and there is no indication that such conditions would adversely affect the applicant. Moreover, there is no evidence in the record to support that the applicant's spouse would experience hardship due to his concerns for the safety of the applicant in Laos due to her religious beliefs.

We recognize that 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 possibility of the applicant's spouse relocating to Laos has not been addressed in the record. As the record contains no assertions of hardship related to relocation, we cannot speculate in this regard. Accordingly, we find the evidence insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were he to relocate to Laos to be with the applicant. Based on the evidence in the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Laos to reside with the applicant.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

As the applicant has not established 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.