

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



(b)(6)

DATE: **NOV 18 2014** OFFICE: ST. PAUL, MN

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:

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam who 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 having procured a visa to the United States through fraud or misrepresentation. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant did not demonstrate that her qualifying relative would experience extreme hardship given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated March 31, 2014.

On appeal, counsel submits: a brief; statements from the applicant, her spouse, and his two children; medical records; photographs; and a news article on health care in Vietnam. In the brief, counsel contends the applicant's spouse will suffer extreme emotional, medical, and personal hardships in the event of separation from the applicant or upon relocation to Vietnam.

The record includes, but is not limited to: the documents listed above; documentation of birth, marriage, divorce, citizenship, and death; additional medical records; financial documents; correspondence; other applications and petitions; and photographs. 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.

Section 212(i) of the Act provides:

- (1) 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.

In the present case, the record reflects that the applicant claimed in a November 11, 2012, non-immigrant visa application that she was married, and that her husband resided at the same address as her. On appeal, the applicant contends that she did not read, write, or understand English when she filled out the application. She explains that someone assisted her in completing the form, thought that person filled in accurate information, and she did not realize the person indicated she was still married to her ex-husband since they divorced in [REDACTED]

The Immigration and Nationality Act makes clear that a foreign national must establish admissibility “clearly and beyond doubt.” See section 235(b)(2)(A) of the Act. See also section 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In this case, the applicant has not met her burden of demonstrating that she is not inadmissible for representations made on her non-immigrant visa application.

Although she contends she did not read, write, or understand English, and that she had someone assisting her with the application, the record reflects that she electronically signed the application. In doing so, she certified that she had “read and understood the questions in this application to the best of [her] knowledge and belief.” See *Form DS-160, Non-immigrant visa application*, signed November 11, 2012. Her signature also constituted an acknowledgment that “the submission of an application containing any false or misleading statements may result in the permanent refusal of a visa... [a]ll declarations made in this application are unsworn declarations made under the penalty of perjury.” *Id.* In light of these certifications, the applicant is deemed to be responsible for the correctness and truth of the contents, regardless of who assisted her with the application. Furthermore, the applicant does not provide a cogent explanation on how the preparer, who is listed as a friend on the application, would provide correct information on the ex-husband’s name and date of birth, only to provide incorrect details on whether he then lived with the applicant, or indicate that he was her current spouse when in fact they had been divorced for approximately eight years.

As such, we affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured her visa to the United States through fraud or misrepresentation. The applicant’s qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 (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 applicant's spouse contends he will experience medical and emotional difficulties without the applicant present. The spouse states he has coronary artery disease, insomnia, sleep apnea, chest pain, high blood pressure, high cholesterol, esophageal reflux, erectile dysfunction, and vertigo. He indicates that he was taken to the emergency room in 2003 and 2012, and that he takes numerous medications to control these medical conditions. Medical records are submitted in support. The spouse also explains that, after his former wife suffered from cancer and passed away in 2012, he has experienced severe depression and anxiety, for which he also takes medications. He states that meeting and falling in love with the applicant, and now having her as his wife, has alleviated many of his depressive symptoms, and he claims that without her, he fears his physical and mental health will decline. The spouse asserts that he has, however, experienced additional emotional and psychological issues in light of the applicant's immigration-related difficulties.

The spouse also claims he cannot relocate to Vietnam. He states that he was born in Vietnam, and after the communists took over in 1975, he was forced to remain working for the bank, where he was an expert legal officer of investment, because of his financial expertise. The spouse claims his work conditions changed rapidly, and he became afraid, as people he knew who refused to follow the communist government's orders were jailed or killed, including two of his friends. The spouse explains that in 1991 he and his family received visas to the United States. He adds that he did not tell his employer about the visa or his plans to leave Vietnam, and instead, he took two months of leave, and they quietly departed the United States. The spouse indicates that his fear of the Vietnamese government led him to change his name, and during visits to Vietnam he has been very careful to not be noticed by the government. In addition to his fear of the government, he states that he will not be able to work and pay for his mortgage, insurance, credit card, and medical bills if he returns to Vietnam. Counsel adds that the spouse's son provides over half of the financial support to maintain his home, which totals approximately \$3500. The applicant's spouse moreover states that he has close relationships with his U.S. citizen son, daughter, son-in-law, and grandchildren in the United States, and he would miss them if he had to relocate. Letters from the spouse's children are submitted on appeal. The spouse lastly contends that he would have difficulty obtaining adequate medical care in Vietnam in light of the poor health system. An article on geriatric care in Vietnam is submitted in support.

The applicant has not provided sufficient evidence to demonstrate that her spouse would experience extreme hardship upon relocation to Vietnam. Although the spouse claims he would currently be in danger from the communist government were he to live there again, the applicant has provided no evidence in support of these claims. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

*Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the applicant has provided no evidence on what her spouse's expenses in Vietnam would be, or whether he and the applicant could earn a sufficient income to cover these expenses. In addition, although the applicant submits one article on geriatric care in Vietnam, this is insufficient to show that the applicant's spouse would be unable to access necessary medical care in that country.

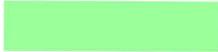
The record reflects that the applicant's spouse would experience emotional hardship in the event of separation from his two children and grandchildren in the United States. However, the evidence of record does not establish that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, safety-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Vietnam.

The applicant has also not provided sufficient documentation to show that he would experience extreme hardship upon separation from his spouse. Medical records are provided to support assertions of medical difficulties. However, the record does not contain a letter from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects his quality of life to allow an assessment of the spouse's medical needs and whether the applicant's assistance is necessary for those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The applicant has demonstrated that her spouse has experienced psychological difficulties in light of his former wife's medical difficulties, her death in [REDACTED], and the applicant's immigration issues. While we acknowledge that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, the record does not demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, we cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Vietnam without him.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act. 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.

(b)(6)



*NON-PRECEDENT DECISION*

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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.