



U.S. Citizenship
and Immigration
Services

(b)(6)



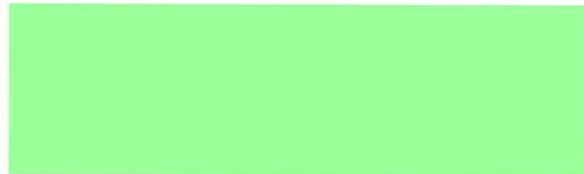
DATE: **NOV 19 2014** Office: OAKLAND PARK, FL

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Brazil 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 misrepresenting material facts in an attempt to procure an immigration benefit. He is the spouse of a U.S. citizen and has one U.S. citizen daughter, one U.S. citizen stepson, and two lawful permanent resident stepsons in the United States. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated November 4, 2013.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) should reconsider the evidence of extreme hardship to the qualifying spouse and also provides updated evidence. *See Brief accompanying Form I-290B, Notice of Appeal or Motion*, dated December 2, 2013.

The record contains, but is not limited to: affidavits and letters from the applicant, qualifying spouse, their children, their friends, coworkers and members of the community; identification documents for the applicant and his family; country-conditions materials about Brazil; medical and psychological documentation regarding the qualifying spouse; financial documentation; a letter from the qualifying spouse's prior employer; and certificates of appreciation for the applicant from charity organizations. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (i) 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 chapter is inadmissible.

The record indicates that the applicant applied for a nonimmigrant employment visa using fraudulent documentation on August 13, 1998. Thus, the applicant is inadmissible for misrepresentation pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

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

- (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien.

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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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*, 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.

With respect to the qualifying spouse’s emotional hardship, a licensed mental health counselor in her evaluation indicates that the qualifying spouse suffers from adjustment disorder with depressed mood, and her doctor has prescribed an antidepressant. Medical reports and a letter from the applicant’s doctor also confirm that she suffers from depression. In one affidavit the qualifying spouse admits that she is “not entirely emotionally stable” and that she has been through “many ups and downs in [her] life, and low points have taken [their] toll.” Specifically, according to the psychological evaluation, the applicant’s spouse’s parents constantly fought, she left home after her mother kicked her out at age 17, and her pregnant sister was killed in a car accident in 1994. She also states that if the applicant is removed she would “sink deep into the abyss [she] found [herself] languishing in” before she and the applicant met. Further, the qualifying spouse indicates that the applicant has given her stability, and she describes being emotionally and financially dependent on him. The qualifying spouse’s sons also indicate that their mother is very dependent upon the applicant for emotional and financial stability, and they worry about the impact his departure would have on her. In addition, the applicant’s spouse asserts that she suffers from anemia, which often makes her too weak to take care of herself and requires monitoring. Medical evidence, including a letter from her doctor, show that she is being treated for this disease and that it affects her psychologically.

In addition, the applicant’s qualifying spouse asserts that the applicant supports her financially and that after being laid off from her job this year, she would not be able to live solely on the unemployment benefits she currently receives. The record contains a letter from her employer,

indicating that, after almost ten years with their company, she was laid off for economic reasons; it also contains proof of her unemployment benefits. In her affidavit she indicates that since June 2013 she works with her sons in the applicant's restaurant, and she is relieved, knowing that her sons are financially stable. The record contains many letters and affidavits demonstrating that the applicant runs a restaurant and convenience store that provides employment to over 20 people and that, according to a 2011 tax return, grosses over one million dollars per year. Although the business belongs to the applicant's daughter according to the evidence submitted, the record also shows that the applicant runs the business. Further, the record substantiates claims through letters and affidavits that the qualifying spouse relies heavily on income the applicant provides. As such, the record reflects that the cumulative effect of the emotional, psychological and financial hardships the applicant's spouse would experience in the United States without the applicant rises to the level of extreme.

Concerning the emotional hardship the applicant's spouse would experience if she were to relocate to Brazil, the applicant's spouse, a native of Brazil who married the applicant in 2011, came to the United States in 2001, according to her psychological evaluation, and has three sons in the United States: two U.S. legal permanent residents and one U.S. citizen. The qualifying spouse states that if she lived in Brazil, she would almost never be united with her entire family. However, she does not explain why she could not unite with her sons either in Brazil or in the United States. She also states that their dreams "are gone" if the applicant lives in Brazil. However, the applicant does not address why he and his spouse could not realize their dreams together in Brazil. Family, friends and members of the community describe in their letters the strong ties that applicant and his spouse have to the United States. The applicant provides no evidence addressing the extent of their family and community ties to Brazil. In addition, the qualifying spouse asserts she could not find suitable healthcare in Brazil for her medical and psychological issues, compared with the treatment that she receives in the United States through insurance that the applicant helps her obtain. Although the applicant submits country-conditions documentation, these reports do not confirm assertions regarding the inadequacy of Brazil's healthcare and its availability. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg. Comm. 1998); see *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this case, the record does not contain sufficient evidence to show that the hardships the qualifying relative would experience upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. As the applicant

(b)(6)

NON-PRECEDENT DECISION

Page 6

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.