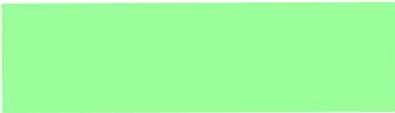


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

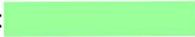
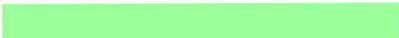


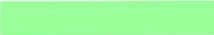
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **OCT 29 2014** OFFICE: NEW YORK, NY

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. On May 12, 2014, the AAO issued a Request for Evidence (“RFE”) which the applicant responded to on August 5, 2014. The appeal will be sustained.

The applicant is a native and citizen of Ukraine 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 attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. 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 and children.

The district director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of district director* dated April 15, 2009.

On appeal, counsel contests the district director’s finding of inadmissibility under section 212(a)(6)(C)(i)(I) of the Act, claiming the applicant never made any willful misrepresentations. Counsel also asserts that the applicant demonstrated that her spouse would experience extreme hardship due to her inadmissibility. In the RFE, the AAO indicated the applicant had not met her burden of demonstrating she was not inadmissible due to her February 10, 2001, use of a counterfeit visa to procure admission, and her subsequent attempt to procure admission on April 12, 2001, with a photo-substituted visa. *See RFE*, May 12, 2014. As the applicant’s materials on extreme hardship were from her 2009 submission, the AAO provided the applicant with an opportunity to submit updated documentation on this matter. *Id.*

In response, the applicant submitted: her updated statement; a statement from her spouse; articles on current events in Ukraine; copies of 2013 U.S. federal income tax returns; a U.S. Department of State travel warning; articles on fraudulent visas in Ukraine; and a copy of the applicant’s February 10, 2001, sworn statement. In the applicant’s statement, she contends she never intended to defraud immigration authorities. She adds that because of the war between Russia and Ukraine, relocating would be dangerous for her, her spouse, and her children, and that their prospects in Ukraine are poor, given the country conditions. The spouse further states that if she is separated from her spouse, he will be unable to meet his financial obligations and raise their son in the United States.

The record includes, but is not limited to: the documents listed above; additional briefs in support; documentation of birth, marriage, divorce, residence, and citizenship; statements from the applicant and her spouse; support letters from family, friends, and community members; financial and educational records; 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 this case, the record reflects that on February 10, 2001, the applicant attempted to enter the United States using a counterfeit visa. She provided a sworn statement, and she was ordered removed under section 235(b)(1) of the Act. The applicant was issued a Notice to Alien Ordered Removed / Departure Verification Form (Form I-296), and a Notice and Order of Expedited Removal. (Form I-860). The applicant was removed on the same day. On appeal, the applicant claimed that she never wilfully made a misrepresentation, stating that no one ever told her that the services of the agency she used to obtain the visa were illegal. She added that the immigration official only indicated there was a problem with the visa, that she was not deported or removed, or that she was inadmissible for a period of five years. In response to the RFE, the applicant contends that she did not know the visa she obtained was invalid, as the practice of getting visas through a third party agency was widespread in Ukraine, and even a member of the Ukrainian parliament did so. The applicant attached articles in support. She adds that she truthfully confessed to the immigration official that her visa was obtained from an agency.

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 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 the present case, the applicant has failed to meet her burden of demonstrating that she did not know the visa she presented was fraudulent. In her February 10, 2001, sworn statement, in response to a question on whether she obtained the visa at an American consulate, she replied that she “got it at a place next to the Consulate” and that she was aware the visa was not issued to her by the consulate. *Sworn statement*, February 10, 2001. In addition, the applicant stated that she paid \$6000 for the visa. *Id.*

Although the U.S. Department of State's Foreign Affairs Manual allows for use of travel agents, the applicant does not present any evidence to show it was reasonable for her to pay a travel agency \$6,000 to facilitate a legitimate B-2 nonimmigrant visa application, when services included "providing the forms and information, to assistance in completing the application, to actual submission of the application." See 9 FAM § 41.103, PN 5. The applicant submits articles indicating that two people in Kiev were detained for preparing false documents, and that a member of the Ukrainian Parliament was banned for entry to the United States for submitting incorrect documents and using an agency. However, these articles do not substantiate claims that the applicant believed that she obtained a legitimate nonimmigrant visa in light of the fact that she paid \$6000 for it, and she knew the American consulate did not issue it.

Furthermore, it is noted that the applicant's February 10, 2001, attempt to procure admission at the [REDACTED] New Jersey airport occurred a few months after she married her present spouse, who was then a lawful permanent resident of the United States, on December 22, 2000. The spouse's Form G-325A, Biographic Information, reveals that he was living in New York at that time. In her February 10, 2001, sworn statement, the applicant made no mention of the fact that she was married to a lawful permanent resident, and that he lived close by; the applicant only indicated she was visiting a relative with breast cancer.

Given the evidence of record, the AAO finds that the applicant has not established that she did not know that she was paying for an illegitimate nonimmigrant visa, and then subsequently used that fraudulent visa in an attempt to procure admission into the United States. As such, we affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States by fraud or willful misrepresentation of a material fact.

The record reflects that the applicant later attempted to enter the United States using a photo-substituted visa on April 12, 2001, and indicated in a sworn statement that she was married to a man in Ukraine, then that she was actually divorced from him, but that he was the father of her unborn child. The applicant did not disclose she was actually married to her present spouse, who was then a lawful permanent resident, or that he was the father of her unborn child, not her ex-husband. We found the applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act for these fraudulent statements or willful misrepresentations. In response to the RFE, the applicant indicates she was 30 weeks pregnant, tired, and found it difficult to provide statements through the interpreter. The applicant claimed she attempted to correct any perceived inconsistent statements as soon as they were brought to her attention, such as her relationship with her ex-husband, which, she claims, was a likely a result of misinterpretation.

The text of the sworn statement does not support these assertions. Although the applicant did indicate she was divorced from her ex-husband, she still incorrectly claimed that he was the father of her unborn child. As indicated above, the applicant never disclosed that she was married to a lawful permanent resident, despite the fact that she was directly asked who her spouse was. Furthermore, there is no objective evidence demonstrating that the applicant was confused when asked who the father of her unborn child was. As such, we affirm that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the

United States on April 12, 2001, through fraud or willful misrepresentation of a material fact. The applicant's qualifying relative for a waiver of inadmissibility under section 212(i) of the Act 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 record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In her updated statement, the applicant claims the violence due to the Russia-Ukraine conflict will cause hardship for her spouse if they relocated to Ukraine. She adds that the U.S. Department of State issued a travel warning, stressing the dangers of traveling to Ukraine. The applicant also contends that they have nowhere to go, as the house they shared in Ukraine was damaged in floods years ago, and that it has never been repaired. She adds that they would have difficulty finding employment, as much of Ukraine remains poor, and because her spouse is no longer a Ukrainian citizen, he would not have access to the public health care system. The applicant moreover states that because she and her spouse are medical professionals, they would be subject to mobilization of medical personnel, and her youngest son might be mobilized into the army, despite the fact that he is a U.S. citizen. The applicant also asserts that moving to Ukraine would cause so many hardships for their youngest son, it would negatively impact her spouse.

The applicant states that if she returned to Ukraine without her spouse, he would be unable to support himself and their children, and to otherwise meet their financial obligations. She indicates that her spouse is unemployed, and she is the only breadwinner. Copies of U.S. federal income tax returns are submitted in support. She adds that her three elder children, who are all U.S. citizens, are all in college, and require financial assistance, and that the spouse's daughter from a previous relationship also requires financial support. The applicant contends that her spouse is now 64 years old, and is trying to find a permanent job, but that it is not easy.

The applicant's assertions that her spouse will not have access to public health care in Ukraine because of his citizenship, and that they would have difficulty finding employment, are not supported by evidence of record. 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)).

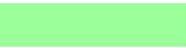
The record does reflect, however, that the applicant's spouse will face safety-related difficulties upon relocation to Ukraine. According to the U.S. Department of State:

The Department of State warns U.S. citizens of the risks of travel to eastern Ukraine due to ongoing violent clashes between Russia-backed separatists and Ukrainian forces in the eastern regions of [REDACTED] and [REDACTED]. In addition, Russian military forces continue to occupy the Crimean Peninsula and are present on the eastern border of Ukraine.

Travel Warning: Ukraine, August 28, 2014. Furthermore, the applicant has established that relocation would entail separation from family members, including his elder children, in the United States. Therefore, in light of the evidence of record, we find the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, 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 concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Ukraine.

The applicant has also provided sufficient evidence to demonstrate that her spouse would experience extreme hardship upon separation. The updated documentation of record reflects that the spouse, who is now 64 years old, is currently unemployed, and relies on the applicant for financial support. In addition, the record indicates that the spouse will face difficulties raising their 13 year old son without the applicant's presence, and that he will experience some emotional hardship upon separation.

The record therefore reflects that there is sufficient evidence of record to 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 establishes that the financial, psychological / emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the applicant has shown her spouse would suffer extreme hardship if the waiver application is denied and the applicant returns to Ukraine without her spouse.



Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In this case, the negative factors include the applicant's misrepresentations. The positive factors include the extreme hardship to the applicant's spouse, evidence of some hardship to her U.S. citizen children, and a lack of a criminal history.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. The motion is granted, and the underlying appeal will be sustained.

ORDER: The appeal is sustained.