



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **APR 14 2015**

Office: NEWARK FIELD OFFICE

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,

[Handwritten signature]

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated January 7, 2013.

On appeal, filed on January 26, 2013, and received by the AAO on November 13, 2014, the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by finding that she had not established her spouse would suffer extreme hardship as a consequence of her inadmissibility. In support of the appeal the applicant submits a brief and copies of previously-submitted documentation. The record contains statements from the applicant and her spouse, medical documentation for the applicant's spouse, financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 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.

Prior to addressing whether the applicant qualifies for a waiver, we will consider the issues related to the applicant's inadmissibility. The field office director determined that on the applicant's 2007 nonimmigrant visa application, she indicated that she was married when in fact she was not married.¹ Based on this information the field office director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal the applicant states that she did not intend to misrepresent her marital status, but that she had been living with the father of her children for many years and believed that she was married under the law. In her statement the applicant contends that as they had lived together for more than 20 years, everyone considered them married even though he had never divorced from his wife. She states that for many years her official Peruvian documents indicated that she was married, so she was simply following what her government identity documents showed as her marital status. She states that she did not realize the significance of indicating she was married instead of single, but did not want to contradict the information on her Peruvian identity documents.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. *In Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

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

- a. 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.

¹ The record shows that the applicant entered the United States with a visitor visa on October 13, 2007, with authorization to remain until April 12, 2008. The applicant was placed in removal proceedings on June 15, 2010, with those proceedings terminated on May 10, 2012, because of the applicant's pending I-485 adjustment of status application.

The U.S. Department of State Foreign Affairs Manual 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.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that she was married when applying for a nonimmigrant visa, the applicant cut off a line of inquiry which was relevant to her eligibility for a visitor visa. The applicant states that she had believed that she actually was married and that she had not wanted to contradict her identity documents. We note, however, that the applicant had an opportunity to explain during her consular interview that although she had three children with the same man, they were not actually married. Further, although the applicant states she had been living with the father of her children for many years and believed that she was married under the law, she has not provided evidence that they were living together at the time she applied for the visa or that they were considered to be married. The burden of proof is on the applicant to establish that she is admissible and eligible for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not established that she did not willfully misrepresent a material fact when she claimed to be married when applying for a nonimmigrant visa. Therefore we concur with the field office director's finding that the applicant is inadmissible for 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. 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. *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.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of separation from the applicant. Neither the applicant nor her spouse has submitted a statement or supporting evidence concerning any emotional hardships that the spouse would experience due to separation from the applicant. The record contains medical documentation showing that the applicant's spouse has been diagnosed with diabetes, but neither the applicant nor her spouse has indicated in their statements that the spouse would experience any medical hardship due to separation from the applicant, and there is no explanation from the spouse's physician of the severity of his condition or indication that he is under any type of care that would require the applicant's physical presence in the United States. The record contains financial documentation submitted in support of the application to adjust status, and the applicant's spouse states that they

have no savings, but there is no explanation of any financial hardship the spouse would experience if he were to remain in the United States while the applicant resided abroad due to her inadmissibility. The spouse's 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.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Peru to reside with the applicant due to her inadmissibility. In their statements the applicant and her spouse state that the spouse has only rudimentary knowledge of spoken Spanish and cannot read or write Spanish since he was born and has lived in the United States. They contend that the applicant's spouse could thus not be gainfully employed in Peru and the spouse states that they have no monetary savings. However, the record does not contain any country condition evidence or documentation establishing that the applicant or her spouse would be unable to obtain gainful employment in Peru or an explanation from the applicant about her own inability to support her spouse there, and the evidence is therefore insufficient to establish that their economic concerns if the spouse relocated would rise to the level of extreme hardship.

The applicant states that she and her spouse want to continue to live together in the United States so her spouse can remain under the care of doctors here for his diabetes. The spouse states that he believes his diabetes can develop into more a serious form if not under proper medical supervision and he believes the medical system in Peru is not at the same level as the United States, making him afraid to go there. Medical documentation submitted to the record includes lab results and a note from the spouse's physician indicating that has been diagnosed with diabetes and is receiving treatment. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition, and there is no indication that applicant's spouse would be unable to obtain adequate health care in Peru.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to a qualifying relative 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.

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.