



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 03 2015**

FILE: [REDACTED]
APPLICATION RECEIPT: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York District, denied the application. 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 Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for misrepresenting a material fact to gain admission to the United States. She is the beneficiary of a Form I-130, Petition for Alien relative, that her U.S. citizen spouse filed on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her family.

The Acting District Director concluded that the applicant had not established that her qualifying spouse would suffer extreme hardship if the application were denied and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of Acting District Director*, dated February 28, 2014.

On appeal, the applicant, through counsel, asserts that the Acting District Director distorted the facts and did not consider the hardship evidence in the aggregate. The applicant further asserts that the Acting District Director abused her discretion and her decision was arbitrary and capricious. The applicant claims that the Acting District Director failed to consider the effects of relocating and separation and the hardship her daughter's health issues would cause her spouse. Finally, the applicant asserts that the Acting District Director violated the applicant's due process rights because her decision lacked meaningful analysis.¹ *See Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated March 24, 2014.

The record includes, but is not limited to, a brief; identity and relationship documents; medical records; a psychological evaluation; financial records; photographs; and articles regarding the impact of fatherlessness and health care in Russia. 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)(1) of the Act provides:

The Attorney General [now the 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 alien who is the spouse, son or daughter of a United States

¹ Constitutional issues are not within the appellate jurisdiction of the AAO; therefore this assertion will not be addressed in the present decision.

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 indicated that she was married on her application for a nonimmigrant visa, when in fact she was unmarried. She was admitted into the United States as a nonimmigrant on October 12, 2012, with permission granted to stay until April 11, 2013. She has not departed to date. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for making a material misrepresentation to gain admission to the United States. The applicant concedes she is inadmissible under this ground.

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. The applicant's qualifying relative is her U.S. citizen spouse. 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-Morales*, 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*, 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.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. Specifically, the applicant asserts that USCIS failed to consider that her daughter will lose a positive father figure if she and her daughter relocate, because her spouse is the only such figure in her daughter’s life. 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 child will not be separately considered, except as it may affect the applicant’s spouse.

Addressing hardship her U.S. citizen spouse would experience if he were to remain in the United States without her, the applicant asserts that her spouse is seriously depressed and suffers from chronic health problems. She states that she helps him and his mother. In support of her claim, the applicant submits a statement from her spouse, medical records, and a psychological assessment.

The applicant’s spouse states that he was in a car accident in December 2011 and injured his neck, lower back and left knee. He claims that he had physical therapy for three months but that he still experiences pain. He states that due to his medical condition, he requires a great deal of medical attention and help with his regular chores. He says he is lucky to have his current job as a home health care worker because it does not require him to lift heavy objects or sit for protracted periods.

In addition, the applicant says that because her spouse's gall bladder was removed, she must prepare special meals for him. The applicant's spouse also states that he has become dependent upon the applicant for dietary support. The applicant submits no corroborative evidence showing her husband had gall bladder surgery or needs a special diet. The applicant also does not address whether her spouse is able to follow a special diet in her absence. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The medical evidence reflects that the applicant's spouse had two magnetic resonance imaging tests (MRIs), but the medical terminology used in documenting the radiologist's impressions is unclear. Moreover, the record lacks evidence to corroborate the applicant's spouse's claims that he requires ongoing medical attention.

With respect to his emotional and psychological hardship, the applicant submits a psychologist's evaluation of her spouse, which states that he is suffering severe personal distress and appears to be experiencing a major depressive disorder. The psychologist states that the applicant's spouse explained that he would be unable to survive in the United States without the applicant, as both he and his mother rely upon the applicant, and "in his darkest moments he has had suicidal ideas." According to the evaluation, the applicant's spouse reports feeling stressed, overwhelmed, and sad. The psychologist concludes that he is experiencing severe personal distress and a major depressive disorder, and she recommends cognitive behavioral therapy.

The applicant's spouse states that he could not manage all of his responsibilities as well as his work without her, and that she "greatly contributes" financially to their family. According to the employment section of the applicant's Form G-325A, *Biographic Information*, however, the applicant is a housewife and not gainfully employed.

In addition, the applicant's spouse also asserts that if the applicant and her daughter return to Russia, her daughter would lose him as her father figure. He further asserts that the applicant's daughter sustained burns and requires close medical attention, which is unavailable in Russia. The applicant submits photographs of her daughter's burns and a doctor's letter to corroborate claims of her daughter's injuries. The applicant asserts that the Acting District Director failed to consider how her spouse would experience hardship related to her daughter if he remains in the United States, given his concern for her daughter. The applicant, however, has not shown that her spouse would experience emotional hardship related to her daughter's condition. While health care may be more expensive in Russia, the record shows it is available. Moreover, the record lacks evidence describing the bond between the applicant's spouse and her 11 year-old daughter. The applicant submits an article that concerns health care for foreign nationals going to Russia. The record lacks evidence about the unavailability of health care to Russian nationals living there.

Although the applicant states, on appeal, that USCIS failed to consider the effect of separation on her spouse, we do not find such an error in the denial decision. The record includes evidence showing that the applicant's spouse would experience some degree of emotional hardship if he remains in the

United States without the applicant. The evidence, considered in the aggregate, however, does not establish that her spouse would suffer more than the expected effects of separation. The applicant submits no evidence to corroborate claims that her spouse would experience financial, medical or other types of hardship that cumulatively amount to extreme hardship.

The applicant, through counsel, also asserts that if her spouse, a native of Russia, relocates with her, he would be unable to find sufficient health care. She further asserts that her spouse would experience emotional hardship because he would become separated from his dependent mother, who lives in the United States, and because of his concern for her daughter and her need to find adequate health care. The applicant also asserts that USCIS failed to consider the adverse financial impact of relocation on her spouse, who will have to pay for her daughter's health care in Russia. The applicant submits an article stating that medical care in Russia "is expensive, difficult to obtain and not entirely comprehensive."

Having considered the applicant's claims and the article addressing health care in Russia, we are unable to conclude that the applicant's spouse would experience extreme hardship if he returned with her to Russia. The applicant's spouse is familiar with the language and culture of Russia. In addition, the applicant provides no evidence to support claims that he would experience financial or emotional hardship there. Although the applicant's spouse would experience the disruptions and difficulties normally created by relocation, we do not find these hardships, considered in the aggregate, to meet the extreme hardship standard of section 212(i) of the Act. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Accordingly, the applicant has not established that her spouse would suffer extreme hardship upon relocation.

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 not established 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.

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.