



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

(b)(6)



DATE: **AUG 10 2015**

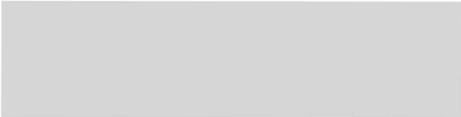
FILE:

APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the 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 Field Office Director, Los Angeles, California, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion. The motion will be granted and our previous decision affirmed.

The applicant is a native and a citizen of South Korea, 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 procuring or attempting to procure admission to the United States by fraud or misrepresentation by entering the country using a false passport. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, December 30, 2013. On appeal, we agreed with the director that the evidence was insufficient to establish extreme hardship to a qualifying relative and dismissed the appeal. *Decision of the AAO*, December 1, 2014. On motion, the applicant claims we incorrectly applied current law by ignoring an immigration judge's termination of removal proceedings.

In support of the motion, the applicant submits an affidavit of her spouse, copies of two orders of the immigration judge, and her own statement. The entire record was reviewed and considered in rendering this decision.

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

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 [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 [...].

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful U.S. resident husband is the 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.

The applicant does not contest she is inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States in January 2005 from Mexico using a fraudulent passport and to have resided here since that time, but claims the record entitles her to a waiver due to the extreme hardship her inadmissibility imposes upon her husband. A new statement from her husband dated December 2014 updating his January 2014 statement in support of the appeal is the only new evidence provided other than the applicant's own statement.

Previously, we concluded that the applicant had not established her husband would suffer extreme hardship either by remaining in the United States without his wife or by moving overseas with her. On the applicant's motion, we now revisit the question of whether separation of spouses or relocation of the husband would impose extreme hardship on a qualifying relative.

The applicant has submitted no new evidence for us to change our prior conclusion that, while moving back to the country he left at age 17 would entail hardships for the applicant's husband, the record failed to establish they would exceed the usual or typical consequences of inadmissibility or removal. Although the statement by the applicant's husband addresses hardship due to separation, it likewise fails to offer sufficient evidence of hardship for us to change our prior determination.

Regarding the claimed hardship due to separation, we note first that the new statement by her husband is substantially the same as his prior statement, repeating verbatim much of the earlier statement, but updating several contentions: he states that the child whom he had previously noted his wife was expecting in June 2014 has been born and he describes his mental condition in more serious terms than before. There is no supporting evidence regarding either claim. Regarding previous evidence of the impact of his reported anxiety and depression and the burden of raising children alone, we noted the lack of evidence regarding the treatment or prognosis of his psychological condition and the lack of evidence that he would be unable to care for his children. He now adds a claim that his physical health is failing, but without providing any supporting evidence. Based on the updated record, there is insufficient evidence for us to change our conclusion that the severity of the emotional hardship he will experience from his wife's departure, either directly or through his children, will rise to the level of extreme. There is no indication he will be unable to visit his wife overseas, nor any evidence regarding our prior finding that the applicant's departure had not been shown likely to adversely impact his financial situation.

The applicant asserts that our dismissal of the appeal ignored the judgment of an immigration judge to terminate her removal. She further claims that the judge's order creates a situation where it is as if

her removal proceedings never occurred, but this assertion is contradicted by the record.¹ We note that the order terminating removal merely permits the applicant to pursue adjustment of status, while in no way addressing the waiver of inadmissibility on which any such adjustment will depend. By terminating proceedings so that she could apply for adjustment of status before USCIS, the judge did not determine that she was no longer removable and made no reference in his order to discretionary relief from her inadmissibility offered by a waiver of that inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although we are not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

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 motion is granted and the previous decision of the AAO dismissing the appeal is affirmed.

¹ Contrary to the applicant's claim that the immigration judge's termination of proceedings indicated she deemed the proceedings to be unjust, the record reflects merely a judicial adoption of the administrative solution proposed by the parties to permit USCIS time to adjudicate the applicant's adjustment of status claim. By its express terms, the termination order did "not constitute a final judgment rendered on the merits" and, in fact, was based on the parties' agreement that "should USCIS determine either that the respondent is not eligible for adjustment of status, or that the respondent should be denied adjustment for any reason, the *respondent understands and agrees that the Department may seek to have these proceedings reopened, or to commence removal proceedings anew.*" Order of the Immigration Judge, March 24, 2011, and Joint Motion to Dismiss Without Prejudice (emphasis added).