



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 25 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:
[REDACTED]

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,

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 of Ecuador and a citizen of Spain 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 acting district 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 Acting District Director* dated August 28, 2013.

On appeal the applicant contends that her spouse would suffer extreme hardship due to separation from her or if he were to relocate to Spain with her. With the appeal the applicant submits a brief and an updated affidavit from her spouse. The record contains statements from the applicant and her spouse, financial documentation, educational documentation for the applicant, information about child care for the applicant's daughter, 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.

The record reflects that the applicant entered the United States on July 13, 2010, under the visa waiver program with permission to remain for 90 days. At her January 9, 2013, interview for adjustment of status, the applicant indicated that at the time of her entry she intended to marry her

current spouse. Based on this information the acting district director found the applicant inadmissible for fraud or misrepresentation by obtaining entry via the visa waiver program without revealing her intent to marry and remain in the United States.

On appeal the applicant asserts that although she intended to marry her current spouse, it was a general intent and there was no definitive date set at the time she entered the United States. The applicant asserts that although she had been her spouse's girlfriend for three years and they had a child together in Spain, at the time of her entry to the United States her spouse was still married to another person and they were awaiting his divorce to become final with no idea when it would be finalized. She asserts that her spouse had returned to the United States in June 2010, before she and their child arrived in July 2010, and although they married on September 2, 2010, her spouse did not petition for her until April 2012. The applicant asserts that this shows she had no actual intent to immigrate when she applied for entry via the visa waiver program, and thus she did not commit fraud or misrepresentation.

The applicant claims that although she and her spouse planned to marry after his divorce became final, they had no idea when it would be finalized when she entered the United States in July 2010. The record shows that the applicant's spouse's divorce from his previous wife became final on August 4, 2010, with the spouse appearing at court on July 23, 2010, just 10 days after the applicant's entry to the United States, and that the applicant and her spouse then married on September 2, 2010. Although the applicant stated she and her husband did not know when his divorce would become final, she has not specified whether she was aware of the July 23, 2010, court date when she entered the United States on July 13, 2010, and the fact that the divorce became final less than one month after her entry undermines her claim that she had no idea when this would occur. Further, government records indicate that when the applicant sought admission under the visa waiver program, she stated to the immigration officer that her husband was a U.S. Citizen who resided in Spain and that she was visiting relatives in New York, when in fact she was not married but intended to marry a U.S. Citizen who was residing in the United States.

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.

Here, by failing to disclose her intention to marry in the United States and by stating that she had a husband who resided in Spain, the applicant shut of a line of inquiry relevant to her eligibility to enter the United States at that time. Therefore we concur with the acting district director's finding that the applicant is inadmissible for fraud or misrepresentation.

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. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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.

On appeal the applicant asserts that her spouse now has a new life through their marriage and that, as a person with a criminal record who has been incarcerated, needs her emotional support. The applicant states that her spouse needs her presence in his life as it has helped him reform and that she stands by him when he is shunned from society. The applicant states that it is impossible for her spouse to properly raise their daughter alone while maintaining steady employment and that without her no one would care for their daughter, who is dependent on the applicant for schooling and doctor appointments. She further asserts that if the daughter returned to Spain with the applicant it would destroy her spouse’s relationship with the daughter he loves.

The spouse states that he served 17 years of imprisonment for three convictions, including sexual misconduct, robbery, and parole violations, and that he is deeply remorseful and has been out of the criminal justice system since 2002. He states that he met the applicant in October 2007 while she was visiting the United States and that he went to Spain in May 2008 to be with her. He states that their marriage is the best thing that has ever happened to him, that the applicant’s companionship

and love is the glue of the family, and that without the applicant he may have fallen into recidivism, but she inspired him to be better.

Statements by the applicant and her spouse provide little detail and the record contains no supporting evidence concerning the emotional hardship the applicant's spouse states he would experience due to separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)). It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience some hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

On appeal the applicant states that her spouse has a criminal history, and though he has been living cleanly he has been unable to attain adequate and consistent work to support her and their daughter. The applicant states that her spouse is a hardworking man but needs her financial support as his income can barely provide for himself and it is difficult to provide for their daughter. The applicant states that her spouse pays the rent but counts on her income to survive. She asserts that her spouse has avoided recidivism through her emotional and financial support, but that he has no prospects for a better financial future without her as she is the primary breadwinner and provides for a majority of their expenses and cares for their daughter. She further states if she returned to Spain with their daughter it would place a strain on her spouse, who would be forced to support both of them because the economic situation there would not allow her to provide for their daughter.

The spouse also states that the applicant is the primary breadwinner and asserts that with a criminal record it is difficult for him to return to school and earn a higher-paying salary to provide adequately for the household. He states that his salary pays their rent but the applicant pays for everything else, so without her he would have to assume her financial responsibilities.

Documents submitted to the record include an income tax return and W-2 forms for the applicant and her spouse from 2012, pay statements for the applicant and her spouse from 2013, a lease agreement from August 2012 to August 2013, child care receipts from 2013, a taekwondo academy receipt for the applicant's daughter from 2013, and bank statements from 2012.

Although the record shows that the applicant's spouse would face financial difficulties without the applicant, the record does not support the claim that the applicant is the primary breadwinner or establish that the hardships the spouse would face, considered in the aggregate, rise to the level of "extreme." The applicant and her spouse express concern over the care for their daughter, whom the record indicates was born on [REDACTED], but the record does not establish that the applicant's spouse would be unable to arrange alternate child care coverage for his child so that he would be able to continue working. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall

determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's U.S. citizen spouse will endure some hardship as a result of long-term separation from the applicant. However, his 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 Spain to reside with the applicant. The applicant asserts that the economy in Spain is worse than in the United States and that her spouse would be forced to seek employment without any prospects or skills while having difficulty adapting to a new country. The applicant also states that she suffers from diabetes, but no medical documentation has been submitted to the record to establish the applicant's medical condition or how that causes hardship for her spouse.

The applicant's spouse also states because of the economy in Spain he would face worse employment prospects than in the United States. He states that he lived in Spain for about two years and because of severe joblessness there decided to return to the United States. He also states that the United States has better opportunities for their child.

Here the record does not contain any country condition information or other documentary evidence to support the assertion that the applicant and her spouse would be unable to obtain gainful employment in Spain. The record also fails to address where the applicant would live if she returned to Spain, and therefore fails to establish that economic concerns would rise to the level of extreme hardship for the applicant's spouse, or that conditions would cause any hardship to the applicant's daughter that would then cause extreme hardship to her spouse. The assertions of the applicant and her spouse have been taken into consideration; however, as noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

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. We therefore find that the applicant has failed to establish extreme hardship to his qualifying 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.