



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

(b)(6)



DATE: **AUG 26 2015**

FILE:

APPLICATION RECEIPT #:

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:



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 Director, Nebraska Service Center, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured an immigrant visa and subsequent entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen parents.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

In support of the appeal the applicant maintains that she did not intentionally make a false statement to a consular officer when applying for an immigrant visa in 1997 as the Unmarried Child (age 21 or older) of a U.S. citizen. The applicant asserts that she was only asked three questions during the consular interview: her name, her father's name, and the names of her brothers and sisters, and nothing else. As such, the applicant contends that she is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 . . .

With respect to the director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record indicates that the applicant's father filed

a Form I-130, Petition for Alien Relative (Form I-130) in January 1991 on behalf of the applicant, as the unmarried child (age 21 or older) of a lawful permanent resident. The Form I-130 was approved in February 1991. In January 1997, the applicant submitted the immigrant visa application and declared that she was divorced. In April 1997, the applicant applied for admission at a port of entry and was granted lawful permanent resident status under the classification F24-Unmarried Son or Daughter of Permanent Resident

In September 1997, when attempting to re-enter the United States after traveling abroad, the applicant admitted that when she presented the above-referenced immigrant visa package in April 1997, she was in fact married.

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.

The record establishes that the applicant misrepresented her marital status when she applied for the immigrant visa in January 1997. Despite her assertions to the contrary, the applicant listed her marital status as "Divorced" on the Optional Form 230, Application for Immigrant Visa and Alien Registration (OF 230). In reality, the record establishes that the applicant married on [REDACTED] 1995, well before she signed the OF 230 under penalty of perjury.

By affirmatively stating, under penalty of perjury, that she was divorced when applying for an immigrant visa based on her father's sponsorship, the applicant led the American Embassy in the Dominican Republic to believe that she was eligible for an immigrant visa as the unmarried child (over 21) of a lawful permanent resident parent. By not disclosing she was married, she cut off a line of inquiry which was directly relevant to the applicant's request for an immigrant visa based on her father's sponsorship. As such, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her January 1997 immigrant visa application.

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 record establishes that the applicant's U.S. citizen parents are the only qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 BIA 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 BIA 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 BIA 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 BIA 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, 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 contends that her parents' medical conditions were not properly considered. The record contains a statement from the applicant's parents. In the statement, the applicant's parents contend that they each have a need for daily assistance as they are unable to drive, and since the applicant is unmarried and her children are adults, she would be able to assist in their daily care. The applicant's parents maintain that were the applicant in the United States, she would be able to shop for them, cook for them, drive them to the doctors' offices and attend therapy sessions. They note that they are unable to visit the applicant because their age and their medical conditions prohibit them from traveling.

We acknowledge the contentions in the record that the applicant's parents will experience emotional hardship were they to remain in the United States while the applicant resides abroad, but the record does not establish the severity of this hardship or the effects on their daily lives. Nor has the applicant provided documentation on appeal from her parents' treating physician(s) to substantiate their claim that they are unable to travel or care for themselves without the applicant's support specifically.

While the record establishes that the applicant's parents have been diagnosed with mental and medical conditions and are receiving treatment, the documentation does not establish the hardships they would experience were the applicant specifically to remain abroad. We note that the applicant's parents have a support network in the United States, including the presence of other children. The applicant has not established that her siblings would be unable to assist their parents as needed. 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)). Nor has the applicant established that she would be unable to obtain gainful employment abroad that would permit her to assist her parents should the need arise. The applicant has thus not established that her parents would experience extreme hardship were they to remain in the United States while the applicant continues to reside abroad as a result of her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, this criterion has not been address. The applicant has thus not established that her parents would experience extreme hardship were they to relocate abroad to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's parents' hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise 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 appeal will be dismissed.