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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: AUG 26 2015



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.

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles Field Office, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Armenia 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 attempt to procure admission into the United States. The applicant is married to a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative, that her spouse filed on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and their two U.S. citizen children.

The Field Office Director concluded that the applicant did not establish that her qualifying spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of Field Office Director*, dated October 2, 2014.

On appeal the applicant, through counsel, asserts that the Field Office Director's finding that her spouse would not experience extreme hardship was conclusory and that she did not provide reasons supporting the application's denial, thereby violating her due process rights. The applicant claims that she established that her qualifying spouse would suffer extreme hardship if the application is denied, and she submits additional evidence on appeal to support her assertion. *Brief filed in support of Form I-290B, Notice of Appeal or Motion*, filed October 30, 2014.

The record includes, but is not limited to, statements from the applicant and her spouse, identity and relationship documents, medical records, financial documents, school letters and records, and reports describing conditions in Armenia. 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:

- (1)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 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 applicant attempted to enter the United States from Canada on December 6, 2003, using fraudulent documents. She was placed into expedited removal proceedings and referred to an immigration judge because she requested asylum. The immigration judge denied her asylum claim on February 18, 2005, and ordered her removed to Armenia. The Board of Immigration Appeals dismissed the applicant's appeal, and her subsequent petition to the U.S. Court of Appeals for the Ninth Circuit was denied on August 20, 2007. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for seeking to procure admission to the United States through willful misrepresentation of a material fact. The applicant does not contest her inadmissibility.

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. 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-Moralez*, 21 I&N Dec. 296 (BIA 1996). The applicant's U.S. citizen spouse is her qualifying relative.

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 children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is her only qualifying relative, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

This matter arises in the Los Angeles Field Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant asserts that the Field Office Director violated her due process rights by not providing reasons to support her finding that the applicant had not established extreme hardship to her spouse

in the Form I-601 denial decision. While the decision should have included an explanation to support the Field Office Director's finding, constitutional issues are not within the appellate jurisdiction of the AAO. Therefore this assertion will not be addressed in the present decision.

We will first address hardship to the applicant's spouse if he relocates to Armenia to be with the applicant. The applicant asserts that her husband, a native of Armenia, would suffer emotional, financial, and medical hardship upon relocation. The record reflects, as she and her spouse assert, that her spouse is an asylee who has resided in the United States since 2000. The applicant states that they would not have a place to live, and they would have no financial means to start a business or support their family in Armenia. She says that Armenia has a very high unemployment rate. In addition, the applicant claims that her husband suffers from chronic back pain and would be unable to find suitable health care, without paying bribes for treatment, in Armenia. She asserts that corruption and human rights violations are rampant in Armenia. She adds that she and her husband would experience emotional hardship, because their children would lose many educational and social opportunities if they had to live in Armenia. To support these claims, the applicant submits statements, financial documents, medical records, and reports on conditions in Armenia.

The applicant and her spouse state that they would both experience emotional hardship on account of their children's lost opportunities and hardships in adjusting to life in Armenia. The applicant states that their children do not speak Armenian. The applicant's spouse states that he fears that their children would be harassed and face discrimination as foreigners. The applicant provides U.S. Department of State reports that describe rampant corruption in Armenia. Both the applicant and her spouse assert that they also would suffer emotionally because their children's access to educational opportunities would be limited in Armenia, in part, due to corruption.

With respect to claims of financial hardship on relocation, the applicant submits articles stating that the official unemployment rate likely differs significantly from the actual rate, which is much higher. The applicant and her spouse are concerned that they would be unable to find employment that would generate an income sufficient to support their family.

To corroborate her claims that her husband suffers from chronic back pain, the applicant submits a physician's letter and records of a July 2014 emergency room visit related to his back pain, including a list of medications her spouse takes. According to the physician's letter, the applicant's husband has severe, recurrent lower back pain and needs family members to care for him during such episodes.

The evidence establishes that the applicant's spouse would suffer extreme hardship upon relocation to Armenia. As an asylee, he was found to have a well-founded fear of future persecution there. In addition, the record reflects that he would experience emotional hardship related to their children's hardship. Taking this into account along with evidence of the likelihood of significant financial hardship, the applicant has established that the hardship her husband would endure if he relocated to Armenia, considered in the aggregate, rises beyond the common results of removal or inadmissibility to extreme hardship.

The applicant also asserts that if her husband stays in the United States without her, he will experience emotional, financial and physical hardship. To support her claim, she submits a psychological evaluation, tax documents, and medical records.

According to the psychological evaluation, prepared after two sessions in February and March 2014, the applicant's spouse would suffer extreme psychological hardship should they be separated. The psychologist also states that the applicant's spouse is currently experiencing clinically significant symptoms in response to the applicant's potential deportation. Her spouse is diagnosed with adjustment disorder with depressed mood and showed signs of repression and denial as coping strategies.

Concerning his potential financial hardship if they live separately, the applicant and her spouse state that the applicant stays at home to care for their two children, ages 7 and 10, and if she returns to Armenia, her spouse would be unable to care for them while also working full-time. The applicant's spouse is self-employed. They also assert that he could not afford to pay for childcare. The financial evidence shows that the applicant and her family live well below the poverty guideline threshold, which in 2013 for a family of four was \$23,550. The applicant and her husband reported a total income of \$16,240 in 2013.

The applicant's spouse states that when he experiences severe back pain, he relies upon the applicant for his basic needs. As noted above, the applicant provides medical documentation to support this claim.

The evidence establishes that the applicant's spouse would experience emotional, physical and financial hardship if he had to assume childcare responsibilities while maintaining full-time employment. The applicant has also shown that, in addition to her spouse's own emotional hardship resulting from their separation, he would suffer emotionally out of concern for their young children's ability to adjust to their separation and their ensuing emotional hardship. Taking into account their children's ages, their relationship with the applicant, and evidence of the family's difficult financial circumstances, the applicant has established that the hardship her husband would endure if he remained in the United States, considered in the aggregate, rises beyond the common results of removal or inadmissibility to extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would experience and the hardship their two children would face if the applicant were to reside in Armenia, the applicant's family ties in the United States, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation to gain admission into the United States and her removal order.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.