



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-E-K-

DATE: DEC. 23, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Morocco, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Philadelphia, Pennsylvania, denied the application, and we dismissed a subsequent appeal. The matter is now before us on motion to reopen and reconsider. The motion will be denied.

The Director found the Applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure an immigration benefit. Concluding the Applicant had not established that failure to receive a waiver would impose extreme hardship on a qualifying relative, the Director, accordingly, denied the Application for Waiver of Grounds of Inadmissibility. *Decision of Field Office Director*, April 29, 2014.

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*, April 22, 2015. On motion, the Applicant claims we erred in finding that separation would not represent extreme hardship to his wife, that the extreme hardship standard exceeds the statutory language, and that he was denied due process of law due to an unfair reading of the facts. In support of the motion, the applicant submits a two-page brief. 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. Hardship to the applicant's children may only be considered to the extent it represents a hardship to a qualifying relative. The Applicant's lawful U.S. resident wife is only 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-Moralez*, 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 he is inadmissible under section 212(a)(6)(C)(i) of the Act for having falsely claimed on a January 2001 non-immigrant visa application to be married when in fact he was not married. The Department of State issued his non-immigrant visa, he used it to gain admission to the United States on January 25, 2001, and he has not left the country since that time. He asserts the record establishes he is eligible for a waiver due to the extreme hardship his inadmissibility imposes upon his spouse and that our contrary finding was incorrect.

In our prior decision, we concluded that the Applicant had not established his spouse would suffer extreme hardship either by remaining in the United States without the Applicant or by moving overseas with him. We found that the record lacked evidence to corroborate the qualifying relative’s claim that her relocation would involve severe economic consequences for the family and, further, noted that counsel’s undocumented assertions about the absence of a support network, housing, medical treatment, and job prospects are not evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We found the record lacked evidence about Morocco’s economy, availability of medical treatment, or the absence of suitable healthcare, and we noted that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Reg’l Comm’r 1998); *see Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972). Finally, while noting the claim that their children’s options will be affected, we indicated that the Applicant had offered no evidence regarding the impact of the children’s situation on his wife.

Regarding the claimed hardship due to separation, we recognized on appeal that the Applicant's assertions of medical, psychological, and economic hardship were supported by his wife's statement, medical records, the report of a psychologist who treated the wife's depression and anxiety, and financial documents. We found, however, that the documentation did not describe any medical treatment or family assistance his wife currently required, and without such evidence, we were not in the position to reach conclusions concerning the severity of her current health conditions or the treatment she needed. Regarding previous evidence of the impact of her reported anxiety and depression and the burden of raising children alone, we noted the lack of evidence regarding the treatment or prognosis of this psychological condition and the lack of evidence that she would be unable to care for their children. While sensitive that the changed circumstances would impose some hardship, we observed that the record did not show that this hardship or her symptoms would be extreme, atypical, or unique compared to others separated from a spouse. On motion, the Applicant provides no new evidence or citations to law or policy to support his assertion that any emotional hardship his spouse would experience due to separation would rise to the level of extreme. Likewise, there is no new evidence of economic hardship on motion, and the evidence on the record supports our previous finding that the Applicant had not established that his spouse would be unable to find employment or that he would be unable to provide financial support from overseas.

Therefore, we remain unable to find that separation from the Applicant would cause a qualifying relative extreme hardship. We noted on appeal that the Applicant's spouse would experience some emotional hardship due to separation, but that the evidence of psychological hardship did not establish that it rises to the level of extreme. There is also no evidence on motion to overcome our prior conclusion that the Applicant had not established that his departure would cause financial hardship that would exceed the typical consequence of 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 spouse would face extreme hardship if the Applicant is unable to reside in the United States. Rather, the record demonstrates that she 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 wife's situation, the record does not establish that the hardship she 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 to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of B-E-K-*, ID# 14770 (AAO Dec. 23, 2015)