



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

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

MATTER OF S-Y-C-

DATE: DEC. 30, 2015

APPEAL OF CHICAGO FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Taiwan, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Chicago, Illinois, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found 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 attempting to procure an immigration benefit 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 spouse.

The Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly.

On appeal, the Applicant asserts that she did not make any misrepresentations, as the immigration documents containing falsified information were filed for her by an individual claiming to be an attorney. The Applicant further asserts that it was previously determined that her spouse would suffer extreme hardship upon relocation to Taiwan and that he would also suffer extreme psychological and financial hardship upon separation.

The record includes, but is not limited to, the Applicant and her spouse's letters, psychological evaluations for her spouse, letters from her spouse's parents, medical documentation for her spouse's parents, financial documentation, employment documents, and flight information. The entire 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.

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 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 [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 Applicant filed a Form I-140, Immigrant Petition for Alien Worker, on June 25, 2007. In her petition, the Applicant stated that she is an alien of extraordinary ability, as an artist and chief designer, and submitted evidence to support her petition. Amongst other discrepancies, the submitted pictures of the Applicant's work were determined to be the work of another individual. The Applicant asserts that her English was poor at the time that her Form I-140 was filed and she did not know exactly what the immigration paperwork contained. The Applicant submitted a letter stating that she hired an attorney to represent her and simply followed the attorney's instructions and signed many papers.

The Form I-140 filed by the Applicant does not contain any information indicating that it was prepared by an individual other than the Applicant. Specifically, part 9 of the I-140 Form, entitled "[s]ignature of person preparing form, if other than above," is blank. The Form I-140 contains the Applicant's signature and is dated June 1, 2007, by her printed name. The Applicant's signature appears under a certification that under penalty of perjury, the petition and the evidence submitted with it are all true and correct. Though the Applicant asserts that she signed many documents at the behest of her former attorney, the record contains an interview, dated June 12, 2009, in which the Applicant initially confirmed that her signature was included on her Form I-140 and Form I-485, Application to Register Permanent Residence or Adjust Status. However, later in the interview, the Applicant denied that the signatures were hers. The burden is on the Applicant to demonstrate her admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act; see also section 240(c)(2)(A) of the Act. The evidence is insufficient to find that the Applicant did not willfully misrepresent a material fact to procure a nonimmigrant visa, and the Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through 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. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's spouse is the only 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 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.

We will first address hardship upon separation. The Applicant's spouse submitted letters asserting that his mental health and emotional well-being are very dependent upon his relationship with the Applicant. The Applicant's spouse contends that without the Applicant, he would be non-functional and unable to assist anyone, including himself. The record contains psychological evaluations of the Applicant's spouse, the first dated June 25, 2012, the second from October 1, 2014, and the most recent from April 25, 2015, all from the same evaluator. In a notice of intent to deny dated April 7, 2015, we noted that the October 1, 2014, evaluation did not indicate any further evaluation of the Applicant's spouse after the June 14, 2012, evaluation, but still added additional language to the original findings.

The most recent psychological evaluation of the Applicant's spouse does not address the reason for this discrepancy, but includes statements from the Applicant's spouse indicating that he did not previously reveal everything about his mental health history. Specifically, the Applicant's spouse contends that he has experienced severe depression to the point of suicide several times in the past, to the extent of overdosing on sedative medication and attempting suicide through carbon monoxide poisoning. The Applicant's spouse asserts that he currently thinks about suicide every day and would be very lonely and severely depressed upon separation from the Applicant. The evaluation states that the Applicant's spouse's friends all reside in California so that he only has the Applicant and his parents in his state of current residence, Illinois. The evaluator states that due to the Applicant's spouse's mental health history, his diagnosis of major depression is even more serious than previously believed. The evaluation previously diagnosed the Applicant with major depressive disorder, severe, without psychotic features, generalized anxiety disorder, obsessive compulsive disorder and dyssomnia NOS.

The Applicant's spouse asserts that he is financially dependent on the Applicant, as he receives 1,130 dollars from social security and a 1,000 dollars allowance from his parents, monthly. The Applicant submitted an expense report for their monthly household expenditures, with some supporting documentation, totaling 2,917 dollars. The Applicant asserts that her spouse cannot financially afford to reside without her assistance. It is noted that in the Applicant's interview in the June 25, 2012, psychological evaluation, the Applicant asserts that her spouse's parents are elderly and living on social security, so they could not ask them for any money. In our notice of intent to deny, we noted that the record contains tax documents for the Applicant's spouse's father indicating income over 170,000 dollars for each year between 2009 and 2011. In response to our notice of intent to deny, the Applicant's spouse asserts that his parents provide him with a monthly allowance of 1,000 dollars a month. The record does not contain any explanation for the Applicant's previous assertion that she and her spouse could not rely on his parents for any financial support.

However, the Applicant's spouse's mental health history, including previous suicide attempts, and his current and daily suicide ideation, in combination with the normal results of permanent

separation from a spouse, are sufficient to establish that the Applicant's spouse would experience extreme hardship upon separation from the Applicant.

The Applicant asserts that her spouse cannot relocate to Taiwan with her because he is a native of the United States and would be moving to a country he has only visited, not knowing how to speak or write the language. The Applicant's spouse indicates that he cannot relocate to Taiwan because he moved from California to Illinois to care for his elderly parents and cannot leave them behind. The Applicant's spouse contends that his parents rely upon him to help them with their home, financial affairs, health, and everyday issues. The Applicant's spouse asserts that he visits his parents briefly approximately three to four times a week and stays over for three to six hours once a weekend. The Applicant's spouse also notes that he has two children and one grandchild residing in California that he would leave behind upon his relocation. The most recent psychological evaluation for the Applicant's spouse states that he would feel terrible guilty if he left his parents to live out the rest of their lives without him.

The Applicant's spouse's mother submitted a letter asserting that her husband uses a walker and wheelchair, necessitating the assistance of the Applicant's spouse for doctors' visits and other appointments. The Applicant's spouse's mother also asserts that both she and her husband have had hip surgeries, she is on blood thinner medications, and neither of them drives anymore. The Applicant's spouse's father submitted a letter asserting that he is housebound and his son returned to Illinois specifically to assist in caring for him and his spouse. The Applicant's spouse's father contends that he never fully recovered from an infection following a hip surgery, lives in a home with a chair lift, and rarely leaves his home aside from medical appointments. The record contains a letter from the Applicant's spouse's father's primary care physician stating that he is legally blind; has aortic stenosis with moderate to severe peripheral edema; and has degenerative joint disease in the hips, knees, and lumbar spine. The primary care physician also states that the Applicant's spouse's father uses a wheelchair and needs assistance for transfers, in addition to assistance with daily living activities, provided by the Applicant and her spouse. The physician's letter further notes that the Applicant's spouse's father's wife is 90 years of age, uses a walker herself, and that neither one of the couple drives. The record further contains a letter from a certified physician's assistant stating that the Applicant's spouse's parents are able to reside in their own home due to the care and assistance provided by the Applicant and her spouse.

The record reflects that the Applicant's spouse maintains familial ties within the United States, including his children and grandchild. The record further reflects that the Applicant's spouse moved across the United States to act as a caretaker for his ailing parents, who currently rely upon his assistance in their daily life activities. In addition, the Applicant's spouse does not speak Mandarin and does not have ties to Taiwan. Accordingly, the Applicant has established that her spouse would experience extreme hardship upon relocation to Taiwan.

Considered in the aggregate, the Applicant has established that her spouse would face extreme hardship if her waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*,

Matter of S-Y-C-

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 her 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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (the Board). In *Matter of Mendez-Moralez*, the Board, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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). . . .

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Id. at 301.

The Board 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 for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 include the extreme hardship the Applicant's spouse would experience; the letters of support submitted on behalf of the Applicant; her filing of tax returns, and her lack of a criminal record. The unfavorable factors in this matter are the Applicant's misrepresentation, her period of unauthorized stay, and her unauthorized employment.

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.

Cite as *Matter of S-Y-C-*, ID# 10677 (AAO Dec. 30, 2015)