



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 24 2015

Office: OAKLAND PARK FIELD OFFICE

FILE: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application and 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 Romania 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 his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated August 29, 2014.

On appeal the applicant contends that the field office director erred in not finding that his spouse would suffer extreme hardship due to his inadmissibility and that the decision makes incorrect assertions. Submitted with the appeal is an affidavit from the applicant's spouse, a previously-submitted psychological evaluation of the applicant's spouse, death certificates for the applicant's father and the spouse's parents, a 2013 joint income tax return, and country information for Romania and Russia. The record contains other evidence submitted in conjunction with the Application to Adjust Status (Form I-485) and documentation submitted with a Form I-485 and Form I-601 filed by the applicant with his prior U.S. citizen spouse as well as letters of support for the applicant. 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 August 22, 2001, under the visa waiver program by presenting a photo-substituted Italian passport issued in the name of another

person. Based on this information the field office director determined the applicant was inadmissible for misrepresentation. The applicant has not disputed the finding of inadmissibility on appeal.

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. 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. *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.

The applicant asserts that he and his spouse are happy together and emotionally interdependent. The applicant states that the spouse's life has been beset by tragedy, betrayal, and disappointment as she is an only child whose parents were killed tragically, leaving her alone in the world with only a cousin in Russia. The applicant's spouse states that she had two painful relationships before the applicant as her ex-husband cheated on her and she was later in an abusive relationship. She states that she was alone until she met the applicant and that they are now committed to raising their daughter. The spouse recounts how her father was hit and killed by a train in 1998 and her mother burned to death in a 2003 house fire, and that she has never gotten over their loss.

The applicant refers to a psychological evaluation detailing the spouse's personal history and her reliance on him. The psychological evaluation from a mental health professional details the deaths of the spouse's parents, her first husband cheating on her, and her abusive relationship, and reports she states that when she met the applicant "everything felt right". The evaluation observes that the spouse suffered grief and showed symptoms of Adjustment Disorder Not Otherwise Specified following the deaths of her parents, and that she still cries when she thinks of her parents and how they never knew a better life. The evaluation states that the spouse reports being at peace now and very happy, but that she would be devastated emotionally without the applicant as she will be alone with no living relative, and she does not want to raise her daughter without knowing her father. The evaluation opines that if separated from the applicant the spouse will suffer emotional and financial loss which will lead to a psychological decline.

Here we find the record establishes that the applicant's spouse would suffer extreme emotional hardship due to separation from the applicant. The record shows that the applicant's spouse has a history of emotional trauma for which the applicant provides needed emotional support.

The applicant also indicates that the applicant provides financially for his spouse. The applicant states that the spouse is a part-time hairdresser and could barely survive and raise her daughter without the love and support of her child's father. The spouse states that she earns \$16,000 a year as a hairdresser while the applicant earns \$80,000 as a contractor, so she would be plunged into poverty

without him. The record contains a 2013 joint income tax return indicating that the applicant earned \$81,622 from his marble business and his spouse earned \$15,881 as a hairdresser. Here we find the record establishes that without the applicant's financial contribution his spouse would experience extreme financial hardship.

Having reviewed the preceding evidence, we find it sufficient to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant. In reaching this conclusion, we note the spouse's emotional condition and her financial status without the applicant.

We also find the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Romania. The applicant states that in Romania he has only his mother, who lives in the countryside where there are no reasonable prospects of employment for him, and a sister with mental illness and eight people living in her home, so there is no room for his spouse and him. The applicant asserts that his spouse would be plunged into poverty if she were to go to Romania to reside with him. The applicant's spouse states that she does not speak Romanian and cannot take her child to live in poverty. She also asserts that women are not treated well in Romania, especially if not Romanian, making her afraid to move there. The psychological evaluation states that the applicant's spouse reports she does not want to live a poor, hard life again and that in Romania they would have no place to live, that there is no room or money for them in the house of the applicant's sister, and that the applicant has no special skills for work. The evaluation states that the applicant reports it would be a terrible life in Romania for his spouse and baby.

The applicant cites a 2013 U.S. Department of State Report on Human Rights Practices as indicating that Romania is beset with major human rights problems including violence and discrimination against women, child abuse, and widespread government corruption. The Department of State also reports that medical care in Romania is generally not up to Western standards with basic medical supplies limited, especially outside major cities, and that those medical providers who meet Western quality standards in [REDACTED] and other cities can be difficult to locate. *See* U.S. Department of State, Bureau of Consular Affairs, January 16, 2015. The CIA World Factbook, updated June 20, 2014, references widespread poverty in Romania and a 2015 World Bank report calls the poverty rate in Romania as among the highest in the European Union.

The record establishes that the applicant's spouse has resided in the United States since 1998, becoming a citizen in 2004, and has no ties to Romania. She would have to leave her community and employment while being concerned about the safety, health and financial well-being of her and her daughter in Romania. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in

terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). We must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and child would face if the applicant were to relocate to Romania, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's gainful business operation; his payment of taxes; letters of support; community ties; and apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's fraud or willful misrepresentation upon entry to the United States.

The violations committed by the applicant are serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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.