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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **JUL 08 2015**

[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:

[Redacted]

INSTRUCTIONS:

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](http://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,

*for* Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Seattle, Washington, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of the Netherlands who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, February 11, 2013. On appeal, the AAO 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*, September 5, 2013. The applicant filed a motion claiming that new facts and medical evidence remedied prior evidentiary shortcomings. We granted the motion, found the updated record remained insufficient to establish extreme hardship, and thus affirmed our previous dismissal. *Decision of AAO*, April 16, 2014. The applicant filed a second motion with new documentation, including financial and medical information, to support the claim that her absence would cause extreme hardship to a qualifying relative. We granted the motion, again found the cumulative evidence insufficient to establish extreme hardship, and affirmed our previous dismissal. *Decision of AAO*, November 14, 2014.

On a third motion, the applicant asserts the AAO failed to consider evidence of the qualifying relative's full disability or to give deference to a determination of full disability by a Social Security Administrative Law Judge. The applicant resubmits disability evidence, as well as provides new evidence, including documents from the Veterans Administration. We reviewed and considered the entire record in rendering this decision on the motion.

Section 212(a)(6)(C)(i) of the Act provides:

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 [...].

It is uncontested that the applicant is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act for attempting to procure entry to the United States on May 9, 1996 by presenting a U.S. immigration inspector the Illinois birth certificate of another person.<sup>1</sup>

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. In the present case, the applicant's spouse is the only 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 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 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

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<sup>1</sup> We note the applicant made her fraudulent representation before September 30, 1996, the date of enactment of legislation imposing a lifetime bar on admissibility for false claims to U.S. citizenship currently in effect.

“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. 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.

New documentation fails to establish that the applicant’s departure will impose on her husband hardship that rises to the level of extreme. Regarding financial hardship from separation, the record fails to support the applicant’s claim to be the primary breadwinner of the household. While the March 26, 2010 decision of a Social Security Administration (SSA) Administrative Law Judge (ALJ) finds the applicant’s husband to be disabled, the ALJ found his medical condition likely to improve and thus recommended a continuing disability review in 24 months. The record reflects he received \$9,947 in 2012 social security disability payments, and was receiving disability payments from the Department of Veterans Affairs (VA) at the annual rate of \$3,012 as of December 1, 2013. *See VA Letter*, November 14, 2014. A second VA letter of the same date states that this compensation is for impairment between 10% and 30% disabling. There is no indication that his disability status was reviewed as recommended by the ALJ,<sup>2</sup> or whether he is currently receiving SSA disability benefits. In addition to his SSA disability income and VA pension benefits, the applicant submits two 2014 wage statements from the City of [REDACTED] showing earned income reflecting an annualized rate of approximately \$8,000.

We note that the record shows the qualifying relative to have income of nearly \$21,000 from disability and employment sources even without taking into account whether he is still earning income from the [REDACTED].<sup>3</sup> There is no new documentation of the applicant’s current income or allowing calculation of her present financial contribution to the household. Our

<sup>2</sup> Although the record contains no evidence the SSA has updated his disability status, we note the State of Washington Department of Labor and Industries determined an injury to his left knee was not work-related as alleged and his right knee is not injured.

<sup>3</sup> In addition to 2013 wages from the City of [REDACTED] there is evidence he earned \$4,164 from the [REDACTED] in 2013. While showing ongoing income from the City of [REDACTED] the record is silent regarding continuing [REDACTED] earnings.

prior decisions noted a 2012 joint income tax return showing the applicant's earnings of \$9,260 through her employment with [REDACTED] to be her only documented income. We also pointed out the couple's unsubstantiated claim of \$3,191 in monthly expenses and observe that these expenses remain undocumented. Therefore, the updated record contains no basis on which to reverse our previous conclusion that the evidence is insufficient to show the applicant's departure would make her husband unable to meet his financial obligations.

Regarding physical and emotional hardship, the applicant offers no new evidence to support this claim. Although the applicant resubmits the ALJ's decision finding disability, she provides no updated medical records about the qualifying relative's current condition or any related limitations. And, the November 14, 2014 VA letter stating an impairment level of as little as 10% neither explains his limitations nor specifies any restrictions on his activities. Without documentation demonstrating his current medical condition, prognosis, and treatment, or indicating whether he requires assistance with the activities of daily living, we cannot evaluate the nature or extent of the hardship claimed. While there is no evidence that a disability review was conducted to determine whether medical improvement anticipated by the ALJ in 2010 occurred, documentation indicates that the applicant's husband worked two jobs in 2013 and continued working at least one of them in 2014. Further, the applicant offers no new evidence to establish that the emotional impact on her husband differs from the ordinary or typical consequences of inadmissibility or removal. Specifically noting our previous consideration of his diagnosis with anxiety and depression, see *Psychological Assessment*, November 8, 2013, there is no basis for changing the conclusion that evidence failed to show concern for the applicant's immigration status caused her husband adverse consequences amounting to extreme hardship. While we acknowledge that her husband will experience emotional hardship if he remains in the United States without his wife, the evidence fails to establish the severity of this hardship or the effects on his daily life.<sup>4</sup> There is no evidence that he would be unable to visit the applicant overseas to ease the pain of separation.

For these reasons, the cumulative effect of the emotional, physical, and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme or show that, as a result of her absence, he will suffer hardship beyond those problems normally associated with family separation.

The applicant again fails to offer any substantial basis for us to revisit prior findings that there is insufficient evidence to show that a qualifying relative would experience extreme hardship by relocating to the Netherlands. The applicant's counsel again asserts that we do not explain how a long-term resident can make any income in the country or be supported by his wife, states the qualifying relative does not speak the local language, and cites his disability. We note that it is entirely the applicant's burden of proving extreme hardship in order to receive a waiver under the Act and, further, observe that culture differences and financial disruption are usual consequences of inadmissibility. Hardship factors considered to be common rather than extreme include economic disadvantage, loss of employment, inability to maintain present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties,

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<sup>4</sup> He has an extensive support network, including numerous friends who submitted statements in support of the waiver application, three adult children with whom he remains actively engaged, and nine siblings.



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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33.

When considered in its totality, the record reflects the applicant has not established that her husband will suffer extreme hardship if she is unable to remain in the United States. Although he will endure some hardship as a result of the applicant's inadmissibility, his situation is typical of individuals affected by removal or inadmissibility. We thus find that the applicant has failed to establish extreme hardship to her husband as required under the Act. As the applicant has not established extreme hardship, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

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 is granted and the prior decision dismissing the appeal is affirmed.