



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 29 2015**

FILE: 

APPLICATION RECEIPT: 

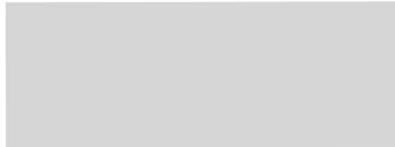
IN RE:

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:



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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Atlanta, Georgia, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Thailand 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). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The acting field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated June 5, 2014.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that the acting field office director erred by not properly considering the evidence of hardship. With the appeal the applicant submits a statement. The record contains affidavits from the applicant and her spouse, medical documentation for the applicant and her spouse, a mental health evaluation of the applicant's spouse, financial documentation, letters of support, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 July 27, 1997, using a fraudulent passport bearing the name of another person. Thus the acting field office director found the

applicant inadmissible under section 212(a)(6)(C) of the Act. The applicant has not contested the inadmissibility finding.

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-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. *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 states that due to her spouse's back problems he is on modified work duty, contends with daily pains, and needs her to care for him and help with treatments. The applicant's spouse states that he has a herniated disc and currently receives steroid injections to manage pain so he can perform work duties. A mental health evaluation of the spouse, dated March 4, 2013, summarizes that without the applicant, her spouse is at risk of becoming depressed from managing his back problems as chronic pain leads to depression, and he would be more vulnerable without sufficient family support and while experiencing the stress of separation from his spouse.

A letter from the spouse's physician, dated January 30, 2013, states that he had been treating the spouse for back and right lower extremity pain that began in October 2012. The physician states that the spouse's herniated disk had not responded well to chiropractic care or medication, although he had shown good early improvement to lumbar epidural steroid injections and that he would continue to be followed in a clinic. Medical documentation also shows that the applicant's spouse has had elbow surgery and that he received epidural injections from January until March 2013, but no subsequent documentation has been submitted on appeal.

Although the record shows that the applicant's spouse has some health concerns, no updated information of the spouse's condition has been submitted, and there is no clear explanation from a physician of how any treatment he currently receives requires the applicant's physical presence in the United States, and the record does not establish that the applicant's spouse could not otherwise obtain any needed family assistance. Further, statements from the applicant and her spouse and the mental health evaluation do not provide sufficient detail to establish the severity of any emotional hardship the applicant's spouse would experience or the effects on his daily life to support that such hardships are beyond those normally associated when a spouse is found to be inadmissible.

The applicant's spouse states that the applicant dreams of becoming a mother, but her opportunity is closing because she has fibroids and was advised that this is likely the reason she has fertility problems. The applicant and her spouse state that they are aggressively seeking options to treat her

infertility as they want to have a child together. Documentation for the spouse includes medical records, one containing a handwritten note that the applicant had been trying to get pregnant for one and a half years as of January 2013. A letter from a medical doctor, dated February 28, 2013, states that the applicant's infertility problem was beyond the doctor's expertise and that she was being referred to a specialist. No follow-up information has been submitted to establish whether the applicant has sought or is undergoing any fertility treatment.

We find that the record fails to establish that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's U.S. citizen spouse will endure some hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Thailand to reside with the applicant. The applicant asserts that if her spouse were to relocate he would be unable to work as a police officer so would face the stress of giving up a career he treasures, and that it would be a burden for him to have a job that would not accommodate his medical condition. The applicant's spouse also states that he could not work as a police officer, a job he loves and sees as his identity, and that the only realistic employment he could find is physical labor but fears how his back would react to stress. The mental health evaluation states that it is unlikely the applicant's spouse could work in law enforcement in Thailand as he does not speak the language, so he could only work as laborer, but he has a herniated disc.

The record does not support that the spouse's inability to continue work as a police officer would create hardship that is extreme. Further, the record does not contain any country condition evidence to support that the applicant's spouse would otherwise be unable to find employment. The record further reflects that the applicant manages her own business in the United States and does not indicate that the applicant and her spouse do not have transferable skills they could deploy in Thailand. Therefore, the record fails to establish that any economic concerns regarding Thailand would rise to the level of extreme hardship for the applicant's spouse.

The mental health evaluation states that it is uncertain whether the spouse can find necessary medical care for his back or other issues and that losing medical care would be a hardship. The applicant's spouse states that he is dependent on his current physician to manage his back issues and is concerned about quality medical care in Thailand. The applicant has not submitted country information to support that her spouse would be unable to obtain adequate medical care in Thailand. According to the U.S. Department of State, medical treatment is generally adequate in Thailand's urban areas and basic medical care is available in rural areas, but English-speaking providers are rare. *U.S. Department of State, Bureau of Consular Affairs – Thailand, April 8, 2015*

The applicant states that her spouse would suffer pain from being separated from his entire family, including his son, as he is very close to his family. The mental health evaluation, also noting the spouse's close-knit family, states that his mother is retired and has multiple sclerosis and requires assistance when walking. However, no supporting documentation has been submitted regarding the

spouse's mother and a letter of support from her does not describe any medical condition she has or any assistance provided by the applicant's spouse. The mental health evaluation states that the spouse provides financial support for his son because the son lives with his mother who is unable to generate a reliable income. The evaluation states that the spouse's relocation would thus be detrimental to his son, who is dependent on him emotionally as well as for significant financial support.

The evaluation indicates that the son attended the January 10, 2013, session, but contains no detail or explanation of the son's relations with or reliance on his father, the applicant's spouse. Financial documentation submitted to the record shows that the spouse's son is the beneficiary of a 25 percent allocation from the spouse's retirement plan, but no other documentation has been submitted regarding the spouse's financial support of his son. The statements and letters of support in the record contain little reference to the applicant's son, and there is no letter from the son or his mother to establish that the spouse's son is emotionally or financially dependent on the applicant's spouse such that the spouse would experience extreme hardship by relocating to reside with the applicant.

The applicant states that her infertility problems would be more challenging if dealt with in Thailand and that it is improbable she will become pregnant if she does not remain in the United States. As noted above, the medical documentation submitted to the record does not establish what procedures the applicant may be undergoing. No country information has been submitted about the availability of fertility treatment in Thailand.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. We therefore find that the applicant has failed to establish extreme hardship to her spouse as required under section 212(i) of the Act.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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 appeal is dismissed.