

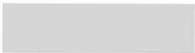


**U.S. Citizenship
and Immigration
Services**

(b)(6)



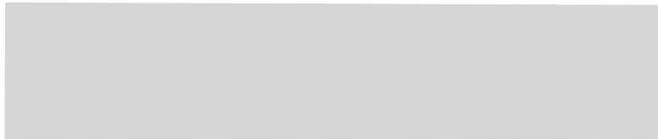
Date: **JUL 29 2015**

FILE #: 

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:



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,



Ron Rosenberg
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native of Kuwait and citizen of Jordan 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 having attempted to procure a nonimmigrant visa on two separate occasions by fraud or willful misrepresentation.

The field office director found that the applicant had not established that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, filed in August 2012 and received at this office in January 2015, counsel for the applicant indicated that a brief and/or additional evidence would be submitted to this office within 30 days. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to this office. We have not received any additional documents in support of the instant appeal. The record is considered complete and 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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 . . .

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the

applicant misrepresented her marital status when she applied for a B Visa in April 2004, and again in August 2004. Specifically, the applicant claimed to be married when she was in fact unmarried.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The U.S. Department of State Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

By stating that she was married when applying for a nonimmigrant visa, the applicant led the American Embassy in Amman to believe that she had close family ties, namely, a husband, in her home country. By not disclosing that she was unmarried, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa.

We note that counsel contends that since both nonimmigrant visa applications were ultimately refused, "there certainly is a question as to the relevance of the alleged misrepresentation on marital status in 2004." Section 212(a)(6)(C)(i) of the Act encompasses fraud or willful misrepresentation of

a material fact in situations where an individual seeks to procure a visa, or when an individual has in fact procured a visa. Irrespective of the fact that the applicant was ultimately refused the B visas referenced above, the applicant did in fact seek to procure the visas by fraud or willful misrepresentation. As such, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her 2004 nonimmigrant visa applications.

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 record establishes that the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a 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 BIA 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 BIA 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 BIA 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 BIA 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 v. I.N.S.*, 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.

In regard to residing in the United States while the applicant relocates abroad, the record does not contain any statement from the applicant's spouse, the only qualifying relative in this case, establishing the hardships, if any, he would experience were his wife to relocate abroad. The only documentation in the record is a 2011 psychological report that was sent by email from a psychologist to counsel of record, a December 2010 letter referencing the applicant's U.S. citizen child's referral to an otolaryngologist due to an upper respiratory infection (Tonsillitis), and a September 2010 medical note referencing a "Brace for Pectus Carinatum" for another of the applicant's children.

We acknowledge the contention in the psychological report that the applicant's spouse and child will experience emotional hardship were they to remain in the United States while the applicant relocates abroad, but the record does not establish the severity of this hardship or the effects on their daily lives. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). As for the medical documentation submitted in regard to the applicant's children, the letters are from 2010, over a year and a half prior to the appeal submission. The record does not establish the applicant's children's current medical conditions, the severity of the situation, and the specific hardships the children, and by extension, their father, the only qualifying relative in this case, would experience were the applicant to reside abroad. Nor has the applicant established that her husband and U.S. citizen child would be unable to visit her abroad. The applicant has thus not established that her husband would experience extreme hardship were he to remain in the United States while she relocates abroad as a result of her inadmissibility.



In regard to relocating abroad to reside with the applicant as a result of his inadmissibility, this criterion has not been address by the applicant or her husband. The applicant has thus not established that her husband would experience extreme hardship were he to relocate to Kuwait, his native country, to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise 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 appeal will be dismissed.