



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUN 08 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,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark Field Office, 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 the Dominican Republic 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 October 2, 2014.

On appeal the applicant submits additional evidence and asserts that his spouse will experience extreme financial hardship due to separation from the applicant and medical hardship if she relocates to reside with him. With the appeal the applicant submits a statement, an affidavit from his spouse, and country information for the Dominican Republic. The record also contains financial documentation, medical documentation for the applicant's spouse, 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 April 28, 2013, with a nonimmigrant B-2 visa issued in November 2003. The record reflects that the applicant's visa was issued in November 2003 and expired on November 12, 2004, but that it was altered to reflect an

expiration date of November 12, 2013. At his interview for adjustment of status on August 6, 2014, the applicant stated that he applied to renew his visa after it expired in 2004, but his application was refused by the U.S. Consulate in the Dominican Republic. He states that after his visa renewal application was refused twice, he met someone outside the U.S. consulate who claimed he could “fix” the applicant’s passport. The applicant stated that his passport was returned to him one week later, but that he had not paid for any alterations to his passport. The applicant states that when his passport was returned to him he noticed the altered date on the visa, but was told that the consulate had made a mistake and that it had been corrected. Based on this information the field office director determined the applicant to be inadmissible for fraud or misrepresentation. The applicant states he did not know anything was wrong with his visa until his adjustment interview. He asserts that he never intended to commit fraud and did not know anything was done improperly in obtaining the visa extension.

The issue becomes whether the applicant knowingly used a fraudulent passport to procure admission to the United States, rendering him inadmissible under section 212(a)(6)(C)(i) of the Act. Here the applicant had previously been denied a visa renewal on four occasions, making him aware that the U.S. consulate had found him ineligible for the benefit sought, in this case a visitor visa. The applicant then presented a visa provided by someone he had met in the street, not by the U.S. consulate, to U.S. officials to gain admission to the United States. The applicant claims he that was unaware the visa in his passport had been improperly altered. However, he has not provided sufficient evidence to establish that, after obtaining a genuine visa from the U.S. Consulate and then being denied a renewed visa on several occasions, he was unaware that his visa had been altered to contain a false expiration date when he used it to enter the United States. In application proceedings, the burden is on the applicant to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The applicant must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The applicant has not overcome the finding of the field office director that he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation, and he therefore requires a waiver of inadmissibility.

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's spouse states that she and the applicant had not found their spiritual soulmates until meeting each other, that she married him because she had a feeling of emptiness in her life that her children and parents could not fill, and that her children now have their own families.

The applicant contends that his spouse will have emotional needs if separated from him, and that she has a medical condition and that, if proves to be cancer, she will need him for emotional support. The applicant submitted a handwritten prescription notice for his spouse, dated November 2014, but the note is difficult to read and the record contains no further explanation of any medical condition the spouse has or treatment she requires. The record does not contain sufficient detail or supporting evidence explaining the spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant asserts that if he returns to the Dominican Republic his spouse will experience financial hardship because of a loss of his income. The applicant's spouse states that they pooled their incomes for household expenses and now have debts from purchases made assuming that the applicant would gain legal status. She states that she would not have taken on debt if they had not married and that she cannot pay the debt without the applicant and may have no choice but to file for bankruptcy. The applicant asserts that if he returns to the Dominican Republic he will not be able to help his spouse because he will have to struggle to find employment and because of the conversion rate of the Dominican peso to the U.S. dollar.

Financial documentation submitted to the record includes two credit card statements, auto loan information, and a utility bill. However, there is insufficient evidence to establish that the applicant's spouse would be unable to meet her financial obligations or that she would experience a financial hardship which rises above what is common.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal. We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant.

We also find the record fails to establish that the applicant's spouse will experience extreme hardship if she were to relocate to the Dominican Republic, her native country. The applicant states that health care access in the Dominican Republic depends on income, so his spouse would have diminished access because a high proportion of their income would go for basic necessities. The applicant states that unemployment indications show it would be difficult to find quick employment and reports show that the standard of living is low.

The spouse states that she has been in the United States for more than 19 years and in the same job since 1996. She states that she has no property in the Dominican Republic and no idea how to find a job there, and that the applicant too would have to start from scratch to earn a living and maintain a household, as he sold his business when he came to the United States. The spouse states that they would compete with young people for jobs and that they are getting older, making it increasingly difficult to do hard work. She also states that medical care in the Dominican Republic is nowhere near the quality in United States and that medical treatment there depends on income.

Country information submitted to the record includes general reports on economic conditions and the limitations on medical care, in addition to the Department of State Country Reports on Human Rights Practices for 2013. Although these reports show general conditions in the Dominican Republic, they do not support the claim that if they returned to the Dominican Republic, their health and financial concerns would rise to the level of extreme hardship for the applicant's spouse. The record does not show that the applicant's spouse has health concerns for which she would be unable to obtain treatment, and there is no indication that she and the applicant would be unable to obtain employment or that they do not have transferable skills they could deploy in Dominican Republic.

The spouse also states that if she relocates to the Dominican Republic, she will be separated from her family, and this would cut off her ties with them. She states that most of her family is in the United States with only one sister in the Dominican Republic. However, it has not been established that the applicant's spouse would be unable to visit her family in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, 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 she 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 refused admission. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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.