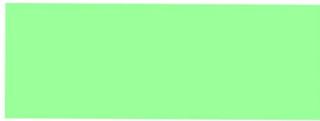




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 20 2015** OFFICE: CHICAGO

FILE:

IN RE:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois denied the waiver application and 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 Latvia 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 procured entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her spouse and children in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and does not merit a finding of discretion, and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated June 12, 2014.

On appeal, counsel asserts that the applicant did not intent to mislead or provide any false information in her visa application. Counsel contends that the applicant's friend completed the applicant's visa application for her and mistakenly made a false assumption concerning the applicant's relationship status.¹

In support of the waiver application and appeal, the applicant submitted identity documents, an affidavit from the applicant, letters of support, an affidavit from the applicant's spouse, documents from the applicant's son's school, documentation of the applicant's son's and his father's participation in the wrestling team, financial documentation, documents concerning the applicant's education, a family photograph, documents concerning the applicant's spouse's business, a lease and background country conditions concerning Latvia. 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:

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 immigrant who is the spouse, son or daughter of a United States citizen or of an

¹ Counsel further states that "the Service did not consider the Application for Waiver" and asks that the AAO "reverse the Service's decision and remand the matter for a new review of the waiver application." The decision by the field office director contains a discussion and analysis of the hardship claim presented with the Form I-601. As such, there is no reason to remand for further analysis.

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 submitted a Form DS-156, Nonimmigrant Visa Application, stating that she was married to [REDACTED]. The applicant signed her Form DS-156 on November 16, 2007. The record indicates that the applicant's marriage to [REDACTED] took place on [REDACTED] 2011. The applicant does not claim to have been married to anyone other than her current spouse. The applicant's spouse filed a Form G-325A, Biographic Information, dated January 18, 2013, stating his name as [REDACTED] and indicating that he has never used any other names.

The record also contains a sworn statement, signed by the applicant on April 30, 2013, in which the applicant asserts that on her previously filed visa application, she stated that she was single. The applicant does not contend that she filed more than one visa application and the record does not contain any indication of additional visa applications submitted by the applicant.

The applicant submitted an affidavit asserting that she prepared her visa application with her friend and her friend answered the question for her regarding the applicant's marital status. The applicant contends that she does not remember whether her friend asked her if she was married, but that she would not have lied if asked. The applicant asserts that she was sometimes presented as her husband's wife and that if strangers assumed that they were married, she would not correct them. As the applicant contends that she prepared her visa application with a friend of hers, rather than an individual to whom she had been presented to as a married woman or a stranger, she provides no explanation as to why her friend would believe that the applicant was married. Counsel asserts that the applicant believes that her friend, seeing the longtime relationship between the applicant and her current spouse and knowing they had a child in common, automatically wrote that they were married.

Even so, as noted, the applicant signed her submitted Form DS-156 on November 16, 2007. Above the applicant's signature is a statement of certification that she read and understood all the questions on the form and that all the answers were true and correct. The burden is on the applicant to demonstrate by a preponderance of the evidence that she was unaware of the false representations in her application. *See* Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a nonimmigrant visa, and the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa through fraud or misrepresentation.

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. 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. *See Salcido-Salcido*, 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 record reflects that the applicant is a 43-year-old native and citizen of Latvia. The applicant's spouse is a 42-year-old native of Latvia and citizen of the United States. The applicant is currently residing with her family in [REDACTED] Illinois.

Counsel asserts that the applicant has known her spouse since they were children and they have a son and daughter together. The record reflects that the applicant and her spouse married on [REDACTED] 2011 and the applicant's spouse has two previous marriages. The applicant's spouse asserts that his is a happy family and that there is not a day that goes by that he does not have an anxiety attack at the thought that his family members would be denied permanent residency. The applicant's spouse further asserts that the stress and depression of awaiting an immigration decision has caused him to lose weight and have problems with sleeping and basic life functions. The applicant's spouse contends that the applicant, as a Latvian with very strong American ties, would put her in a dangerous situation. Counsel asserts that the applicant's spouse believes that the applicant would also be in danger while working and raising two children without him. It is noted that the applicant's spouse does not make this assertion in his submitted affidavit.

The record does not contain any documentation supporting the applicant's spouse's assertions of stress and depression and the related problems he is experiencing. The record also does not contain any indication that the applicant's spouse has been unable to continue with his business and employment despite his anxiety concerning his family members' immigration status. Further, though the record contains background country condition information concerning Latvia, there is no supporting documentation indicating that the applicant, based upon a period of residence in the United States or her employment and caretaking of their children, would be in danger upon return to her native country. 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)).

Counsel asserts that if the applicant returns to Latvia, the applicant's spouse will be unable to financially maintain two households. The record reflects that the applicant is a homemaker and the applicant's spouse financially supports his family with his ownership of a trucking business and employment as a truck driver. The record further reflects that the applicant entered the United States from Latvia on February 15, 2009, and the record reflects that the applicant was employed as a bookkeeper in Latvia. The applicant submitted a Form G-325A, Biographic Information, indicating that both of her parents currently reside in Latvia. There is no information concerning

the extent to which the applicant's family members could and would provide assistance upon her return to Latvia.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel asserts that the applicant's spouse fears return to Latvia for political reasons, as he would be an outcast and potentially considered a spy after accepting U.S. citizenship. Counsel also asserts that the applicant's spouse would be unable to support his family in Latvia in the manner he does in the United States. The applicant's spouse contends that since he accepted U.S. citizenship, he would be deprived of Latvian citizenship, which would cause him difficulty in securing employment. The record contains a document from January 1995 concerning criteria for applicants of Latvian citizenship. The record does not contain any updated documentation concerning Latvian citizenship or address whether Latvia allows for dual citizenship. The record also contains an article addressing Latvia's relationship with Russia, by a professor at the [REDACTED], submitted with no information concerning the date or name of the publication.

The submitted background country condition information for Latvia does not indicate that the applicant's spouse would be considered an outcast, potential spy or face extraordinary difficulty in securing employment in Latvia. It is noted that an article submitted by the applicant states that unemployment in Latvia soared in January 2010, but that it returned to growth in 2011. The U.S. Department of State has not issued any travel warnings for U.S. citizens visiting Latvia. The applicant's spouse owns a trucking business and works as a truck driver in the United States. There is no information concerning the applicant's spouse's former employment in Latvia or indication that he would be unable to pursue employment as a driver upon relocation. The applicant's spouse is a native of Latvia whose mother is currently residing in Latvia.

The applicant's spouse asserts that his son will not receive the same level of education in Latvia as he would in the United States. The record contains documents from the applicant's son's school and evidence that he is a member of the wrestling team. The record also contains evidence that the applicant's spouse is one of the wrestling team coaches. The applicant's son is a citizen of Latvia who first entered the United States on June 10, 2010, after residing in Latvia since birth. It is noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse.

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if he relocated to Latvia.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in

considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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. We therefore find that the applicant has failed to establish extreme hardship to his lawful permanent resident mother 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.