



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 30 2015**

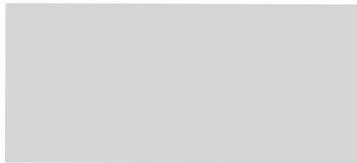
Office: SANTA ANA FIELD OFFICE

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:



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, Santa Ana, California, 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 of Pakistan and a citizen of Canada 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 August 28, 2014

On appeal the applicant contends that USCIS erred by failing to consider all the factors in the aggregate and erroneously interpreted the facts in the case. With the appeal the applicant submits declarations from his spouse and himself, medical documentation for his spouse, financial information, and country information for Canada. The record contains letters of support for the applicant, previous information submitted in support of this waiver application 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 in August 2000 using a passport and visa issued in the name of another person for which the applicant stated that he had paid \$7,000, and that he then failed to indicate that entry on a subsequent visa application in 2005. Based on this

information the field office director determined the applicant was inadmissible for misrepresentation under section 212(a)(6)(C)(i). The applicant has not contested the finding of inadmissibility by the field office director.

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-Moralez*, 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 has painful memories of her previous marriage that destroyed her self-esteem. She states that it took years to trust a man again, that the applicant has helped her back on her feet, that he helps her cope with stress, and that she would be miserable without him. The applicant states that his spouse's children cannot do all the things that he does because her son lives in Chicago and her daughter is married and only visits once a week. He states that his spouse struggles with depression from her previous marriage where she was dishonored and because of a medical condition caused by an auto accident, and that he keeps her spirits up by driving her to medical appointments and doing chores. He asserts that if she remains in the United States without him she will be deprived of his love and affection. The spouse asserts that she could not visit the applicant in Canada as she cannot be on a plane because of high blood pressure.

While the record establishes that the applicant's spouse would experience emotional hardship due to separation from the applicant, it does not contain detailed information explaining how such emotional hardships are outside the ordinary consequences of removal. Further, the spouse's statement indicates that she has an extended, close knit family, including siblings and their children, who live nearby, and she has not established they cannot provide her with emotional support. Nor has it been established that the applicant's spouse would be unable to travel to Canada to visit the applicant and nothing in the record supports the spouse's contention that she cannot fly due to high blood pressure.

The applicant's spouse states that she suffered numerous fractures in a 2004 auto accident and still has pain in addition to having anxiety, depression, hypertension, and arthritis and back, knee and ear pain. She states that she cannot stand for long due to pain and that the applicant helps with therapy, gives her medicine, takes her to the doctor, and helps her with routine exercise. The applicant states that he encourages his spouse to do physical exercises recommended by her doctor and that she depends on him for minor chores at home.

Medical records related to the applicant's 2004 auto accident document fractures of the left humeral, right third metacarpal, orbital, and left rib, and the record contains a claim form for disability insurance in which the attending physician indicated the applicant's spouse was unable to do regular work from August 2004 until September 2005. Records show that the applicant's spouse had medical visits from 2009 to 2014 that included vision concerns, headaches, and neck and back pain. Medical documentation in the record includes a 2014 list of conditions for which the applicant's spouse is receiving treatment that includes hyperlipidemia, hypertension, anemia, glaucoma, and allergic rhinitis, and a list of prescriptions that includes medications for cholesterol and to treat anxiety. The record also contains a September 2014 note from a physician stating that the applicant's spouse was to have right knee surgery and travel was not allowed "at this time" as well as copies of state-issued temporary disabled person parking placards valid in 2014 and 2015.

We acknowledge that the applicant's spouse has health concerns, but the record contains copies of medical records prepared for other medical professionals using medical terminology and abbreviations rather than plain language. The record does not contain a clear explanation from a treating physician of the severity of any current condition or any treatments needed that require the applicant's presence in the United States. We recognize that the applicant assists his spouse, but the record does not establish that without the applicant's assistance, his spouse would suffer extreme hardship. We also note that the spouse's medical issues pre-date her relationship with the applicant, which her statement indicates began in 2013.

The applicant's spouse states that following her 2004 auto accident she had financial problems, she was able to start her car sales business in 2007 following financial settlement from her auto accident, and she is good at making it work. She states that since their marriage the applicant has taken over the role her son once had in her business as her children no longer help because her daughter married and her son graduated from college. In their declarations the applicant and his spouse state that the applicant helps with the daily routine related to the business, that he drives the applicant to business dealings, attends auctions, arranges delivery of cars, has mechanics check vehicles, deals with clients, helps with paperwork, and goes to the Department of Motor Vehicles. The applicant states that his spouse's auto sales business requires contacts, strategies, and hard work and that his spouse gets stressed when a lot of people are talking and needs rest. The applicant states that his spouse's entire income is from their small car sales business, but it provides limited income to meet personal and business financial obligations and that without him his spouse would struggle.

The record includes a business license tax certificate and inventory of automobiles, but otherwise lacks details and supporting documentation of their business operations. The record does not demonstrate that the applicant's presence is necessary for the operation of the business as his spouse has operated it since 2007, or that his absence would adversely affect the business and result in a reduction in the current flow of income to his spouse. There is insufficient evidence to establish that the applicant's spouse would be unable to continue operating the business and meet her financial obligations, or that she would experience financial hardship which rises above what is common when separated from a spouse.

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 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 and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Canada to reside with the applicant. The applicant's spouse states that in the United States she has health insurance and medical care, but by going to Canada she will lose everything, namely her business, family, and health insurance. She states that she has been in the United States since 1978 with her extended family living nearby. She states that the United States is her home with her all memories, life, and roots here. The applicant contends that by relocating to Canada his spouse would be uprooted from family, community, and business.

The applicant states that Canada is colder than the United States, submitting documentation showing the average mean temperature in Toronto as 46 degrees and Los Angeles as 66 degrees, and submits a medical article with an overview of fractures indicating that one may notice increased pain and stiffness when weather is damp, cold, or stormy. The applicant also asserts that to get medical care in Canada his spouse will have to legally emigrate.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's wife suffers from a condition that would cause extreme hardship due to colder weather in Canada, or that she would be unable to obtain care in Canada. According to the government website, all Canadian citizens and permanent residents may apply for public health insurance and once obtained do not pay for most health-care services. <http://www.>

The applicant submitted news articles showing that a majority of Canadians believe employers discriminate against older workers and pointing out that the Supreme Court of Canada took judicial notice of the difficulty with which one can find and maintain employment as one grows older. The applicant also submitted information about immigration processing times for the spouses of Canadian citizens, showing in July 2014 a 28-month wait at the consulate in Los Angeles, and asserts that his spouse would then be more susceptible to age discrimination in Canada.

According to the government website, immigrants may apply for a permanent resident card if they are in Canada and spouses have the opportunity to work while they wait for their application for permanent residence to be processed. <http://www.>

Evidence submitted to the record does not establish that the applicant's spouse would be unable to obtain employment in Canada, and there is no indication, given their business ownership and experience, that she and the applicant will not be able to obtain loans or employment or that they do not have transferable skills they could deploy in Canada.

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 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.