



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-H-S-

DATE: SEPT. 17, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native of the Philippines and a citizen of Spain, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(a)(9)(B)(v) and 212(i), 8 U.S.C. §§ 1182(a)(9)(B)(v) and (i). The Service Center Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for misrepresenting a material fact to gain admission into the United States, and pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States.

The Director, in a decision dated October 10, 2014, found the evidence was insufficient to establish that the Applicant's qualifying spouse would suffer extreme hardship if his Form I-601 were denied.

On appeal the Applicant asserts that he has established that his qualifying spouse would suffer extreme hardship.

The record includes, but is not limited to, statements from the Applicant and his qualifying spouse; identity and relationship documents; financial documents; letters from the Applicant's son and father-in-law; medical records of the Applicant's qualifying spouse and her parents; and photographs. 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:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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.

In the present case, the record reflects that the Applicant obtained a fraudulent passport with a fraudulent I-551 stamp to pose as a U.S. lawful permanent resident using an assumed name. The Applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for making a material misrepresentation to gain admission into the United States. The Applicant concedes he is inadmissible pursuant to section 212(a)(6)(C).

Section 212(a)(9) of the Act provides:

(B) Aliens Unlawfully Present.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary] or is present in the United States without being admitted or paroled

....

- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In the present case, the record also reflects that the Applicant entered the United States on January 9, 1998, under the visa waiver program, and was admitted for 90 days. On August 11, 2005, the Applicant was encountered at his workplace during a sting operation and subsequently removed. The Applicant accrued unlawful presence from the date his authorized stay expired until he was removed on November 2, 2005. The Applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of the date of his removal. The Applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Sections 212(i) and 212(a)(9)(B) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The Applicant's qualifying relative is his U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 contains references to hardship the Applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant’s children as a factor to be considered in assessing extreme hardship. In the present case, the Applicant’s spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the Applicant’s child will not be separately considered, except as it may affect his spouse.

We will first address hardship to the Applicant’s spouse if she relocates to Spain. The Applicant’s spouse indicates that she would suffer financially as a result of relocation; specifically, she would lose her home in foreclosure. Although, in her May 2004 statement, the Applicant’s spouse indicated that she was submitting proof of her home ownership, this evidence is not in the record. The record includes a homeowner’s insurance policy declaration, effective October 31, 2003.

Concerning her medical hardship, the Applicant’s spouse states that she was diagnosed with hepatitis B in 2002, and she takes medication for the condition. She submits an August 26, 2011, “draft of current note” from a physician stating that she suffered from hepatitis B in the past and presently has dermatitis factitia, which relates to “her nerves” and causes scalp and neck itchiness. The same draft note states that the Applicant’s spouse has had trouble sleeping for years but does not take medication. It includes a reference to preparing a letter for the Applicant’s attorney, for purposes of his waiver application. The Applicant also submits an unsigned note from December 2011 on a prescription pad from Advanced Gastrointestinal Specialists, stating that his spouse is being monitored for chronic hepatitis B and that her condition is stable. The Applicant’s spouse indicates

that if she relocates to Spain, she would lose her health insurance, and she is afraid that she would not have access to quality healthcare there. The Applicant provides corroborating evidence that his wife and son have health insurance in the United States.

In addition, the Applicant's spouse states that her parents, now ages 75 and 84, reside with her and her son and that they depend upon her for their support. However, the Applicant submits no evidence to corroborate this assertion. The Applicant's spouse states that both parents suffer from high cholesterol and hypertension. She submits letters from her parents' doctor dated October 11, 2012, indicating that her parents are under his care and listing their medical conditions and medications. The letters do not address whether the Applicant's in-laws require his spouse's care or assistance and do not reflect where they reside.

The record reflects that if she were to relocate to Spain, the Applicant's spouse may experience emotional hardship due to separation from her elderly parents. The record does not include evidence, however, showing that her parents could not accompany or visit her. Moreover, the record does not support finding that she and her son would not obtain suitable healthcare in Spain. In addition, the record lacks evidence that the Applicant's spouse owns a home and would potentially lose it if she relocates. The Applicant has not provided sufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that his spouse would experience extreme hardship upon relocation to Spain.

The Applicant states that his spouse will suffer extreme emotional and financial hardship if his Form I-601 is denied and she remains in the United States. The Applicant's spouse states that she turns to the Applicant for emotional support and that she has suffered emotional distress as the result of their separation. In a statement dated August 23, 2011, she claims to feel restless and describes her apprehension as "debilitating." She is experiencing sleeplessness, depression, anxiety, and she states she often cries and cannot stop worrying. She also describes a physical condition, stress dermatitis, which is caused by depression and anxiety and has not healed because of her daily "severe stress."

In the same statement, submitted with the Applicant's previously denied Form I-601, the Applicant's spouse states that she works two jobs to financially support her family. She adds that she should limit her work hours for health reasons and that without the Applicant's financial support, she may lose their home through foreclosure. However, the Applicant did not provide evidence that his spouse owns her own home. As evidence of financial hardship, the Applicant submits copies of Forms W-2 for 2010 and 2011. According to these documents, in 2011 his spouse earned approximately \$98,000. Although the Applicant also submits a letter to show he has been employed in London since November 2006, the letter does not mention his income, and the Applicant submits no other evidence concerning his earnings. The Applicant submits evidence of remittances, showing he has sent approximately \$18,000 over a three-year period to his qualifying spouse. The Applicant also provides copies of utility bills and contracts for renovation work. His spouse submits a list of monthly expenses totaling \$3500.

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The Applicant's spouse also expresses concern about their son's emotional health, and she states their son needs the Applicant to assist him with his studies. The record includes a letter from the Applicant's son, stating that he misses the Applicant and asks that the Applicant be allowed to return home.

The evidence indicates that the Applicant's spouse may suffer emotional hardship due to separation from the Applicant and that she also is experiencing some medical conditions related to her stress. The record is insufficient, however, to establish that the Applicant's spouse is experiencing financial hardship as the result of their separation, taking into account the evidence of his spouse's income and of the Applicant's efforts to financially assist his family after his departure. The record includes insufficient documentary evidence of emotional, financial or medical hardship that, considered in the aggregate, establishes that a qualifying relative would suffer extreme hardship upon separation.

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. The Applicant has not established extreme hardship to his U.S. citizen spouse. 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.

Cite as *Matter of B-H-S-*, ID# 12794 (AAO Sept. 17, 2015)