



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

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

MATTER OF M-A-H-B-

DATE: SEPT. 28, 2015

APPEAL OF PHILADELPHIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Philadelphia Field Office, 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 Act, 8 U.S.C. § 1182(a)(6)(C), for making a material misrepresentation to gain admission into the United States. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that his U.S. citizen wife filed on his behalf.

The Field Office Director, in a decision dated October 22, 2013, concluded that the Applicant did not establish that his wife would suffer extreme hardship if the waiver was not granted and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that the Director erred in denying the application, because he has established that if he is forced to depart the United States, his qualifying spouse will suffer extreme medical, financial, and emotional hardship. The Applicant submits additional evidence on appeal.

The record includes, but is not limited to, a brief, identity and relationship documents, medical records, financial records, statements from the Applicant and his qualifying spouse, Internet articles describing various medical conditions and medications, and reports about conditions in the Dominican Republic. 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.

(b)(6)

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Section 212(i)(1) of the Act provides:

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 was admitted into the United States on May 29, 2009, as a nonimmigrant visitor for pleasure. On his visa application, filed May 22, 2009, the Applicant checked a box indicating he was then married. He provided his spouse's full name and date of birth. According to Form I-130, however, he had never been married before his marriage, on [REDACTED] 2012, to his current spouse. The record reflects that the Applicant provided a different answer to a U.S. immigration officer when asked the same question at an interview, replying that he had never been married before [REDACTED] 2012. On the Form I-130 petition filed on the Applicant's behalf, the petitioner indicated that the Applicant had no prior marriages. The Applicant filed a Form G-325A, Biographic Information, dated July 10, 2012, indicating that he had no former spouses.

The Applicant explains that he previously had a common-law wife, so when he completed his visa application, he indicated that he was married because he believed he was married. The Applicant appears to assert that his misrepresentation concerning his marital status was not willful.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(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.

A misrepresentation is generally material only if by making it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

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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 proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness of the Applicant's stated misrepresentations, 9 FAM 40.63 N5, in pertinent part, states that:

The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Although the Applicant asserts he believed he was married while in the Dominican Republic, the record reflects that the Applicant is aware of the difference between a common-law marriage and one that may affect his ability to visit or immigrate to the United States. The Applicant has not established that his statement on his visa application was not made knowingly or intentionally. Because the evidence indicates that the Applicant's misrepresentation was willful, he is therefore inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides 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-Moralez*, 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 Applicant asserts that his spouse will suffer emotional, medical, and financial hardship upon relocation. The Applicant's spouse states that she has several chronic and serious medical conditions; she would not have access to adequate health care in the Dominican Republic; and she currently relies on Medicare, which would be unavailable to her there, to pay her medical costs. She

also states that she once visited the Dominican Republic and became ill; therefore, she is concerned that she could become ill again. The Applicant submits evidence of his spouse's health problems, including hypoglycemia, hypothyroidism, hypertension, seizures, arthritis, chronic fatigue syndrome, high cholesterol, anemia, diabetes type II, depression, and anxiety. The record also indicates that the Applicant's wife had gastric bypass surgery in 2011. The Applicant submits evidence that his wife has gone to the emergency room and has been hospitalized on numerous occasions due to low blood sugar. He provides a U.S. Department of State travel warning for the Dominican Republic, which says: "while adequate medical facilities can be found in large cities . . . the quality of care can vary greatly outside major population centers." The Applicant does not provide evidence regarding the cost of health care in the Dominican Republic.

The Applicant also stated initially that being separated from her two siblings who reside in the United States would cause his spouse emotional hardship. In an affidavit, the Applicant's spouse states that she has a brother and sister who live in Philadelphia and that she is close to them. On appeal, however, the Applicant states that his wife's brothers and parents live in Puerto Rico, her sister lives in another state, and they are not close and do not assist her. It is incumbent upon the Applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Applicant also states that his wife's two sons cannot assist her, because one is in prison and the other "has his own issues" with his immediate family.

In addition, the Applicant says that his qualifying spouse would suffer financial hardship in the Dominican Republic, because her medical conditions prevent her from working. She therefore relies on the Applicant's income and Social Security Insurance (SSI). He states that he is likely to have great difficulty finding employment in the Dominican Republic because he is not educated. Although the Applicant's assertions about his employment prospects are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Evidence in the record supports statements that his qualifying spouse receives monthly SSI payments of \$698 due to disability and that she is unable to work. Both the Applicant and his qualifying spouse state on appeal that she can continue to receive SSI in the Dominican Republic.

Although the Applicant's spouse would experience some difficulty adjusting to life in another country, taking into account her ability to continue collecting SSI abroad and her lack of close family ties in the United States, in addition to the lack of evidence establishing the Applicant's inability to financially support her in the Dominican Republic, we conclude that the record is

insufficient to show that her hardships upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The Applicant asserts that his qualifying spouse also would suffer emotional hardship if she remains in the United States without him. He asserts he is her sole source of emotional support. The Applicant and his qualifying spouse both assert that she has only one sibling in the United States, who lives in Florida. This is inconsistent with her prior testimony that she was close to two siblings who reside in the same city as she does.

The Applicant's spouse states that she would experience financial hardship without the Applicant's financial contributions and that they "would not survive" without his income. The Applicant states that he works "off the books," because he lacks work authorization, earning approximately \$350 a week. He does not provide sufficient corroborative evidence to show that he contributes financially to the household he shares with his spouse.

In addition, the Applicant's spouse indicates that she relies upon the Applicant to help her with household tasks and for transportation to and from medical appointments. She indicates that she has home healthcare six days a week during the morning and that the Applicant assists her during the afternoon and evening. The evidence is sufficient to show that the Applicant's wife relies upon the Applicant for physical help and emotional support.

Given her reliance upon the Applicant for financial, physical, and emotional support and her limited financial resources consisting of her monthly SSI payment, the record is sufficient to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, are extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the Applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying spouse in this case.

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 M-A-H-B-*, ID# 12172 (AAO Sept. 28, 2015)