

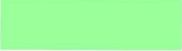
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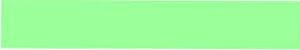
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **SEP 05 2013** Office: MOSCOW, RUSSIA FILE: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior decision of the AAO is affirmed.

The record reflects that the applicant is a native and citizen of Armenia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a U.S. immigration benefit through fraud or the willful misrepresentation. Specifically, the record establishes that the applicant misrepresented himself regarding his military service, which was material to his asylum claim. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The record establishes that the applicant was granted a change of status to an F-1 nonimmigrant visa for duration of status; however, he was then granted an extension of stay until January 3, 2003. On June 11, 2005, the applicant departed the United States. The applicant accrued over one year of unlawful presence between January 4, 2003, and June 11, 2005. The applicant does not dispute these findings. Rather, the applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 10, 2012.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated April 10, 2013.

On motion, counsel submits the following: a brief; medical and mental health documentation pertaining to the applicant's spouse; documentation establishing that the applicant's spouse's son is in prison; country condition information for [REDACTED] financial documentation; a letter from the applicant; certificates issued to the applicant; and medical reports pertaining to the applicant's son, a U.S. citizen. The entire record was reviewed and considered in arriving at a decision on the motion.

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.
-
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The [Secretary] may, in the discretion of the [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 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.

Section 212(a)(9) of the Act provides, in pertinent part:

(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.

....

- (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.

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative. The applicant's U.S. citizen wife is the only qualifying relative in this case. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 v. I.N.S.*, 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.

With respect to remaining in the United States while the applicant continues to reside abroad due to his inadmissibility, on appeal the AAO acknowledged that the record established that the applicant's spouse required assistance with her daily functioning; however, the record also showed that the applicant's spouse resided with her son, and it had not been established that he was unable to assist his mother. The AAO found that the applicant had failed to establish that his spouse would suffer extreme hardship if his waiver application was denied and she remained in the United States. *Supra* at 6.

On motion, counsel maintains that the applicant's spouse suffers from numerous medical issues, including anxiety disorder, major depressive disorder and permanent neurological complications, she needs supervision and assistance in her daily living, and without her husband, she will experience hardship. Counsel notes that the applicant's spouse's mother is elderly and disabled and thus cannot provide any support to the applicant's spouse and moreover, the applicant's son, who used to provide support to his mother, is currently in confinement. Counsel further contends that as a result of the applicant's spouse's physical and emotional issues, she has been encouraged to forego transcontinental flights, thus making it difficult to see her husband on a regular basis. Finally, counsel explains that the applicant's spouse is reliant on social security income to make ends meet but were the applicant to reside in the United States, he would be able to obtain gainful employment and assist in the finances of the household. *Brief in Support of Motion*, dated May 9, 2013.

To begin, the medical records provided on motion are duplicate copies of items previously submitted to the AAO, dating from 2009 and 2011, almost two years prior to the submission of the instant motion. Said records thus fail to establish the applicant's spouse's current medical condition and what specific hardships she is experiencing as a result of her husband's inadmissibility. A letter provided by Dr. [REDACTED] on motion states that as a result of a post cerebra-vascular accident with permanent neurological complications characterized by mild memory impairment and disorientation, the applicant's spouse is unable to perform simple tasks and has great difficulties with activities of daily living and further notes that the applicant's spouse is suffering from major depressive disorder and has been transferred for psychiatric evaluation and further management. The AAO notes that Dr. [REDACTED] lists his address with the [REDACTED] on his tax returns and on the W-2 Wage and Tax Statements for 2009. as [REDACTED] This address is the same address as the address where the applicant's spouse currently resides. Moreover, Dr. [REDACTED] provided a Form I-864, Affidavit of Support, on behalf of the applicant in May 2008. As such, it is not clear what relationship Dr. [REDACTED] has to the applicant and/or his spouse. It is thus not clear to the satisfaction of the AAO that Dr. [REDACTED] is in a position to provide an objective report with respect to the applicant's spouse's medical and mental health situation.

As for the psychiatric report provided by Dr. [REDACTED] on May 7, 2013, the AAO notes that Dr. [REDACTED] states that the applicant's spouse has been under his care since May 1, 2013. No documentation has been provided establishing what, if any, treatment the applicant's spouse has been receiving prior to May 1, 2013, to support the assertion that she needs continued treatment and care for medical and mental health issues. The AAO notes that the applicant has been residing abroad since 2005 and the applicant and his spouse were only married for five months prior to said departure. Further, no letter has been provided on motion from the applicant's spouse, the only qualifying relative in this case, outlining in her own words what specific hardships she would face were her husband to continue residing

abroad. Moreover, although counsel references the applicant's spouse's mother's disability, the record does not contain any documentation regarding the applicant's mother's disability, any specific limitations she may have and what assistance she needs on a daily basis. Finally, although the record establishes that the applicant's spouse has a son, [REDACTED] that is currently detained, the record indicates that the applicant has a sister that resided with him and his wife, as noted in electronic records from the U.S. Department of State from August 2008, and the applicant's spouse has another son, [REDACTED] who resides in the United States. It has not been established that the applicant's sister or son-in-law would be unable to help care for the applicant's spouse, emotionally, financially and/or physically, were the applicant to remain abroad as a result of his inadmissibility. It has thus not been established on motion that the applicant's spouse would experience extreme hardship were she to remain in the United States while her husband continues to reside abroad as a result of his inadmissibility.

In regards to relocating abroad to reside with the applicant due to his inadmissibility, on appeal the AAO acknowledged that relocation abroad would involve some hardship to the applicant's spouse. However, the AAO noted that the applicant's wife was a native of [REDACTED] and no evidence had been submitted showing that she did not speak [REDACTED] that she was unfamiliar with the customs and cultures in Armenia, or that she had no family ties there. Regarding the medical hardship to the applicant's spouse, the AAO found that no documentary evidence had been submitted establishing that she could not receive or afford medical treatment for her medical condition in [REDACTED] or that she had to remain in the United States to receive treatment. *Supra* at 5-6.

On motion, counsel addresses the issues raised by the AAO. To begin, counsel asserts that traveling abroad is problematic due to a drainage tube in her brain. Counsel further notes that the applicant's spouse needs regular follow-up care for her numerous medical and emotional issues and were she to relocate abroad, long-term separation from the specialists familiar with her conditions and treatment plan would cause her hardship. In addition, counsel explains that the applicant's medical coverage through the Social Security Medicare Program does not provide coverage for hospitals or medical costs outside the United States and an evacuation should a medical emergency arise would cost the applicant's spouse thousands of dollars. *Supra* at 2-3, 6-7. In a statement, the applicant maintains that his income as a massage therapist in Armenia is not stable and he is hardly able to manage to cover his own expenses and provide child support to his two minor children who live with their mother in Armenia. *See Letter from Edvard Papoyan*, dated May 6, 2013.

The record establishes that the applicant's spouse, in her late 50s, is suffering from numerous physical and emotional issues that require the continued care of physicians familiar with her treatment plan. As noted by the U.S. Department of State, medical care facilities in Armenia are limited, doctors and hospitals expect payment in cash at the time services are rendered and U.S. health insurance may not cover care abroad. *See Country Specific Information-Armenia, U.S. Department of State*, dated May 6, 2013. In addition, the AAO notes that the applicant's spouse has been residing in the United States for over two decades, and has extensive family ties in the United States, including the presence of her elderly mother, two sons, one whom is incarcerated, and grandchildren. The AAO thus concludes that on motion, it has been established that the applicant's spouse would experience extreme hardship were she to relocate abroad to reside with the applicant as a result of his inadmissibility.

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 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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

On motion, the record does not support a finding that the applicant's 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 is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Further, even if extreme hardship to the applicant's spouse were established in this case, the AAO notes that a favorable exercise of discretion would not be warranted in light of the applicant's extensive fraud with respect to his asylum application, including multiple false statements, fabricated documentation, and false testimony under oath regarding his military service, political involvement, and harm experienced while in [REDACTED]

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 motion is granted and the prior decision of the AAO is affirmed.