



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

[REDACTED]

115

Date: NOV 15 2012

Office: CLEVELAND

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Cleveland, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record establishes that the applicant is a native and citizen of Indonesia who entered the United States in 1999 as a B2 visitor. The applicant 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 a nonimmigrant visa and entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 26, 2008.

On appeal, the AAO concluded that the applicant had established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant as a result of his inadmissibility. However, the AAO concluded that as the applicant had not established that his spouse would experience extreme hardship should she remain in the United States without the applicant, the appeal was dismissed. *Decision of the AAO*, dated March 21, 2011.

On motion, counsel for the applicant submits the following *inter alia*: a brief, dated April 19, 2011; affidavits from the applicant's spouse, spouse's daughter, and spouse's son; medical documentation for the applicant's spouse; a mortgage statement with a due date of March 3, 2008; an auto loan statement with a due date of April 15, 2011; property tax bills from 2008 and 2009; utility bills and credit card statements; family court information for the spouse's son from 2002; and photos. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (1) 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.

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 at

1293 (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.

As noted above, the AAO, in its decision dated March 21, 2011, found that the applicant had established extreme hardship to his U.S. citizen spouse were she to relocate abroad to reside with the applicant as a result of his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility.

As the AAO noted,

With respect to the emotional hardship . . . the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

As for the physical ailments referenced by the applicants' spouse, no letter has been provided on appeal from the applicant's spouse's treating physician outlining her current medical conditions, the gravity of the situation, the short and long-term treatment plan, and what specific hardship the applicant's spouse will face were her husband to reside abroad.

Finally, regarding the financial hardship referenced, counsel has not provided documentation of the applicant's and his spouse's current income, expenses, and overall financial situation to support the assertion that without the applicant's continued financial contribution, the applicant's spouse will suffer financial hardship.

The record fails to establish that the applicant's spouse's continued care and support require the applicant's physical presence in the United States.

On motion, counsel contends the applicant meets the criteria for a waiver based on undue hardship to his spouse. Counsel asserts the applicant's spouse suffers ongoing physical ailments as a result of lifelong physical labor and states that her condition deteriorates with age, and that she has been diagnosed with and prescribed medications for depression. Counsel asserts that the applicant has provided emotional support his spouse had not previously experienced, that the applicant has changed his spouse's life for the better, and that she depends on him to meet the

demands that life has presented. Counsel further asserts that without the presence and support of the applicant his spouse could not cover her many expenses, given deteriorating health and inability to work long hours plus providing assistance to her children due to the difficulties in their lives. Counsel goes on to note that the applicant helps his spouse provide emotional and financial support to her adult son, who had drug problems and had been incarcerated, and her adult daughter, a widow with six children who has medical problems that limit her ability to work. Counsel asserts the applicant has changed the lives of his spouse and her children.

In her statement the applicant's spouse notes physical labor had caused medical problems and that the applicant cares for her and she expects he will care for her when she can no longer care for herself. She states that the applicant provides emotional and financial support for her, her children and grandchildren, and that before the applicant she had "no one to lean on."

In her statement the spouse's daughter states that her mother's life of hard work has taken a toll on her health, and that the applicant has made her mother's life much easier by caring for her. The daughter also notes her own health problems and how the applicant has helped her mother provide a better life for her and the family.

In his statement the spouse's son describes how his incarceration caused emotional and financial hardship for his mother and that the applicant helped his mother, and also helped him with advice and guidance. The spouse's son goes on to note that the applicant continues to help his mother give financial and emotional support to her son.

The AAO recognizes 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 applicant's spouse states that the applicant provides emotional support and cares for her, but does not address how she would respond to his departure and has not established that separation from him would cause her emotional hardship that is extreme. Medical information submitted on motion includes 2009 documentation from a medical doctor indicating the applicant's spouse was assessed with depression and had a prescription for Lexapro. In her brief counsel points out that the applicant's spouse had a psychological evaluation, previously considered by the AAO as speculative and based on a single interview, but the motion includes no further documentation from a mental health professional or other evidence of continued treatment or assessment of how separation from the applicant could affect his spouse.

Additional medical documentation submitted on motion shows the applicant's spouse has been treated for other physical ailments, including arthritis, but other than counsel's brief and statements from the applicant's spouse and her children there is no medical assessment describing the severity of the spouse's ailments and any treatment plan or indicating that the applicant's spouse requires the applicant's presence for her care.

Although the AAO recognizes that the applicant has helped provide his spouse and her children with an improved quality of life, the inability to maintain a present standard of living is a common rather than extreme result of separation. The record has not established that separation

from the applicant would cause his spouse to experience extreme hardship. Further, although the applicant has provided assistance and support to his spouse's children, they are adults with children of their own, and it has not been established that the effects on them of separation from the applicant would result in extreme hardship to the applicant's wife.

With respect to financial hardship, the applicant submitted bills and statements showing some outgoing expenses, but has not provided documentation of income, assets, liabilities or his spouse's overall financial situation to establish that without the applicant's physical presence in the United States, his spouse will experience financial hardship. 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)).

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.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application remains denied.

**ORDER:** The motion to reopen is granted, and the prior decision affirmed. The waiver application remains denied.