U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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U.S. Citizenship and Immigration Services

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[redacted]

DATE: SEP 14 2011 OFFICE: NEW YORK FILE: [redacted]

IN RE: [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 PETITIONER:

SELF-REPRESENTED

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.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York District, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, a native and citizen of Guatemala, is inadmissible 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 fraud or misrepresentation due to her attempted entry into the United States in 1995 using a passport and visa belonging to another individual. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by U.S. citizen husband, [redacted] The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on extreme hardship to her U.S. citizen husband and lawful permanent resident mother.

On April 27, 2009, the District Director concluded that the hardship to the applicant's husband, as described in his affidavit, did not rise to the level of extreme hardship and denied the application accordingly. *See Decision of District Director* dated April 27, 2009. The District Director did not state in her decision whether hardship to the applicant's lawful permanent resident mother was considered.

On appeal, the applicant requests that the hardship to her mother be taken into consideration.

The record contains affidavits from the applicant, her United States citizen husband and her lawful permanent resident mother. The applicant also submitted medical records documenting her lawful permanent resident mother's health history, including her mother's coronary and vascular surgeries in 2008 and 2009, respectively, and a doctor's conclusion that her mother is one hundred percent disabled. The record also contains evidence that the applicant has guardianship over her mother's teenage son. Additionally, the applicant submits letters from her employer, her husband's employer, and the executive director of a community organization where the applicant has taken classes and volunteered. 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.

The applicant is inadmissible under this section due to the fact that she sought admission to the United States using another individual's passport and visa. In her affidavit dated May 26, 2009, the applicant stated that she presented a passport and visa that belonged to another individual when attempting to enter the United States in San Antonio, Texas in 1995. The applicant does not contest her inadmissibility on appeal.

In January 30, 2001, the applicant applied for and obtained a B2 visitor visa at the U.S. Consulate in Guatemala, City.[1] She entered and departed the United States twice using that visa in 2001. On July 18, 2002, the applicant was again admitted to the United States in New York on her B2 visa. She was authorized to remain in the United States until January 17, 2003. The applicant did not depart the United States before January 17, 2003 and remains in the United States to-date.

Section 212(i) of the Act provides:

> (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 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.

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, either a United States citizen or lawful permanent resident spouse or parent. In this case the applicant's qualifying relatives are her lawful permanent resident mother and United States citizen husband. If 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,* 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.

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[1] In the April 27, 2009 decision, the District Director stated that the applicant's B2 visa was obtained fraudulently due to the applicant's failure to disclose her prior deportation order on her application for that visa. The record, however, does not make clear whether the applicant failed to disclose the 1995 incident. It is also not clear from the record whether the applicant received a deportation order or was allowed to withdraw her application for admission. Nevertheless, it is not necessary to reach this issue as the applicant is inadmissible as a consequence of her misrepresentation/fraud in 2001.

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.

In this case, the record does not contain sufficient evidence to illustrate that any hardship to the applicant's United States citizen spouse rises to the level of extreme hardship. The record does contain evidence, however, illustrating that the applicant's lawful permanent resident mother would suffer extreme hardship if her daughter's waiver application were denied.

In her affidavit dated January 20, 2009, the applicant's 52-year-old mother, [redacted] stated that her health began to deteriorate in approximately 2004. Since that time she suffered a heart attack and had open heart surgery in June 2008 and vascular surgery in 2009. [redacted] also stated that she suffers from diabetes, high blood pressure, and arthritis and has trouble walking due to swelling in her legs. These facts are documented in letters submitted by [redacted] (May 12, 2009), [redacted] (May 6, 2009), and [redacted] (May 13, 2009), and in corresponding medical records. [redacted] noted that [redacted] is "100% disabled." As a result of her health conditions, [redacted] reports that she has not been able to work and has trouble walking. The applicant and her mother both state in their sworn affidavits that the applicant provides financial, physical, and emotional support for [redacted] and her minor son, the applicant's brother, United States citizen [redacted] The applicant's mother reports that the boy's father is not involved in his care. The record contains evidence that the applicant has legal guardianship over her brother and is recognized by her brother's doctor and school as his guardian. *See Guardianship Authorization* dated March 21, 2009; *Letter from* [redacted] dated May 14, 2009; and *Note from* [redacted] dated May 15, 2009.

The record illustrates that applicant's mother suffers from very serious medical conditions and is not able to care for herself and her minor son. Those facts in and of themselves do not illustrate the requisite extreme hardship. But the record also contains evidence that the applicant's role in caring for her mother is vital to her mother's day-to-day functioning. In her May 26, 2009 affidavit, the applicant states that her mother relies on her to among other things "help manage her medications, appointments, and overall health care."

Moreover, the applicant provides evidence that her mother would suffer extreme hardship should she have to relocate to Guatemala if her daughter were not permitted to remain in the United States. The applicant's mother has significant medical ties to the United States and her health is dependent on medications that she receives in this country. It is not entirely clear from the record whether those medications would be available in Guatemala; however, considering the seriousness of her condition, it is apparent that moving to Guatemala could pose a significant risk to her ongoing post-operative care and access to emergency care. The AAO notes that according to the U.S. Department of State, "Guatemala's public hospitals frequently experience serious shortages of basic medicines and equipment." U.S. Department of State, Guatemala Country Specific Information, *available at* http://travel.state.gov/travel/cis_pa_tw/cis/cis_1129.html (accessed Sept. 6, 2011). Additionally, given the applicant's mother's disabilities, her quality of life would likely be severely limited, as the Guatemalan government generally does not provide services for the disabled population. *See* U.S. Department of State, 2010 Human Rights Reports: Guatemala, *available at* http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154507.htm (accessed Sept. 6, 2011)

Considered in the aggregate, the applicant has established that her lawful permanent resident mother would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA

1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the applicant's case include the critical support that she provides to her lawful permanent resident mother, the responsibility that she has taken to assist her mother by taking guardianship of her United States citizen brother, her significant family ties in the United States including her United States citizen husband and daughter, and her good moral character as evidenced by the lack of any criminal record and her positive involvement volunteering in the community. In a letter dated May 21, 2009, [redacted] a nonprofit organization providing educational and employment assistance to the indigent, stated that the applicant "has enthusiastically volunteered her time to help others" and "has demonstrated tremendous care and compassion in her efforts to cook meals for the homeless. Moreover, the applicant did not diminish the seriousness of her attempted entry into the United

States in 1995 using another individual's passport and visa and apologized for her actions in the context of the current waiver application.

The unfavorable factors include her attempt in 1995 to enter the United States using another individual's passport and visa. Additionally, it appears that the applicant may not have disclosed her prior immigration history to the United States Consulate on her 2001 application for a visitor visa. This failure to disclose, however, is not manifestly evident from the record. Nevertheless, even assuming there was a second incidence of fraud or misrepresentation in this case, the serious medical hardship to the applicant's lawful permanent residence mother and the other positive factors in this case, including the applicant's apparent rehabilitated moral character, outweigh the unfavorable factors in this case.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.