U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: SEP 2 9 2011 Office: NEW YORK, NY (GARDEN CITY) 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana 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 having attempted to procure an immigration benefit by fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the child of a United States citizen father and a Lawful Permanent Resident (LPR) mother. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated July 31, 2008.

On appeal, counsel asserts that the director failed to consider all the facts and evidence submitted by the applicant. *Form I-290B, Notice of Appeal or Motion,* dated August 22, 2008; *see also, letter from counsel,* dated August 22, 2007.

The record includes, but is not limited to, statements from the applicant and her parents; a letter from counsel; copies of W-2 Wage and Tax Statements and tax returns; letters of employment relating to the applicant's father; and medical statements relating to the applicant's father and son. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

The record reflects that on December 21, 1994, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, based on a Form I-130, Petition for Alien Relative, filed by a fictitious spouse. It further indicates that in 1994, the applicant paid an unknown individual $1,000 to help her immigrate to the United States, which resulted in the placement of a fraudulent ADIT stamp in her passport.

On appeal, counsel asserts that until her 2006 adjustment interview, the applicant had no knowledge that a marriage-based petition had been filed on her behalf. Counsel states that the applicant paid $1,000 to an individual to help her immigrate to the United States in the belief that she would be acquiring status through her father. The applicant in two June 20, 2006 statements asserts that she has never been married, that she was not aware that a marriage-based petition had been filed on her behalf, and that she

paid $1,000 to an individual only to speed up the process of her father's filing for her. The applicant also contends that she was unaware that the ADIT stamp in her passport was fraudulent.

The AAO notes that contrary to counsel's and the applicant's assertions, the record reflects that the May 3, 1996 denial of the Form I-130 filed by [redacted] on behalf of the applicant and the accompanying Form I-485 were mailed to the applicant's address of record as indicated on the Form G-325A, Biographic Information, she filed in 2005. We note that the denial notice sent to [redacted] specifically indicated that the petition was being denied based on the petitioner's and his spouse's failure to show for their interview. The record reflects that the two Form I-751s in the record indicate that in filing for her conditional resident status to be lifted, the applicant acknowledged that her conditional residence status was based on marriage. The two Form I-751s were signed by the alleged spouse; first a [redacted] and secondly a [redacted] The record further reflects that the Request for Evidence (RFE) sent to the applicant's address of record on October 30, 1997, included a request that the applicant's spouse sign the copy of the Form I-751 provided, and that the applicant's response to the RFE included the receipt notice she had been sent for the first Form I-751 and it was returned with the handwritten note "See signature of my spouse." The AAO also notes that the record contains a letter from the applicant requesting rescheduling of the appointment for her and her spouse to be interviewed regarding lifting of conditional residence status.

Based on the above evidence, the AAO concludes that the applicant was aware of the fact that a fraudulent marriage-based petition had been filed on her behalf and that she was an active participant in seeking adjustment on this basis. The evidence also undermines the applicant's assertions that she believed that the $1,000 she paid to an unknown individual was solely to speed up her adjustment through her father and that she was unaware that the ADIT stamp put in her passport was anything other than legitimate. Accordingly, we find the applicant to have attempted to obtain an immigration benefit by fraud or the willful misrepresentation of a material fact and that she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the

applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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*, 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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

In two statements, one dated October 22, 2007 and one undated, the applicant's father, who lives in Chicago, asserts that it would be a hardship for him to relocate to Guyana with the applicant. The applicant's father states that he has lived in the United States since 1995, and that he has not been back to Guyana for more than twelve years. The applicant's father asserts that his immediate family (his United States citizen and LPR sons and his United States citizen mother) reside in the United States, except for one son who lives in England. The applicant's father states that he has worked and earned benefits in the United States through his hard work and that it would be an extreme hardship for him to abandon those benefits and relocate to Guyana with the applicant. In an undated statement, the applicant's father asserts that he suffers from Type II diabetes, that he takes five different medications and is insulin dependent. He states that he is concerned that he will not be able to receive the same level of medical care in Guyana. The applicant's father further states that his elderly mother lives near him in Chicago and that she needs his attention and care.

In her statement of October 22, 2007, the applicant's mother, who lives in New York City, states that she has lived in the United States since 1986, that she has worked as a home care attendant for more than 17 years, that her immediate family (her United States citizen and LPR sons and her current spouse, an LPR) reside in the United States, except for one son who lives in England. The applicant's mother asserts that she has accumulated benefits based on her hard work and that it would be an extreme hardship for her to give up those benefits and relocate to Guyana with the applicant.

In support of these assertions, the record contains a statement from [redacted], dated October 26, 2007, stating that the applicant's father is his patient and that he is being treated for diabetes.

While the AAO notes the claims by the applicant's father and mother regarding the impact of relocating to Guyana, we do not find the record to support them. The record does not contain documentary evidence, e.g., country condition materials on healthcare in Guyana that establish that the applicant's father would be unable to obtain adequate medical care in Guyana for his diabetes or any other medical condition he might have. While the applicant's father and mother express concern about losing the benefits they have accumulated in the United States, there is no documentation in the record to indicate what these benefits are or that they will be impacted by relocation to Guyana. The AAO also notes that while the applicant's father claims that his mother needs his attention and care, the record does not document that the applicant's grandmother is in need of care or that the applicant's father is the only individual responsible for providing the care. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Based on our review of the evidence of record, the AAO finds insufficient proof to demonstrate that the applicant's father or mother would experience extreme hardship upon relocation to Guyana.

The applicant's father states that if the applicant is removed from the United States, his family would be torn apart. He asserts that his family has worked hard to stay together in the United States and that it would be an extreme hardship to separate them now. He also indicates that the applicant has been providing him with financial support to purchase his medications and that it will be a financial hardship for him if she is removed from the United States. The applicant's father also asserts that if the applicant were to be removed from the United States, she would likely leave her son, [redacted] with her mother. He contends that it would be extremely difficult for the applicant's mother to be fully responsible for their grandson and that because of his obligations to his own mother, it would be very difficult for him to permanently move to New York to assist in his grandson's care. The applicant's father further asserts that it would be extremely hard for [redacted] to lose his mother and that the trauma to [redacted] would put an additional burden on him and the applicant's mother.

In her October 22, 2007 statement, the applicant's mother asserts that she and the applicant are very close, that the applicant is very caring and always willing to help her. The applicant's mother asserts that she babysits her grandson, [redacted] at least two to three times a week, that she has bad arthritis in her knees and that the applicant helps her with housework and shopping. The applicant's mother also asserts that the applicant is always available to drive her to places, and that as she and her husband get older, that she will need the applicant's help even more. The applicant's mother states that if the applicant were to be removed from the United States, she would be the likely person to assume responsibility for her grandson's care. She contends that it would be extremely difficult for her at this point in her life to be fully responsible for her five-year-old (now eight-year-old) grandson.

In an August 15, 2008 statement, the applicant states that her son, [redacted] suffers from asthma, that he is under medical supervision and that he often uses a nebulizer. The applicant states that if she had to leave the United States, the huge burden of caring for [redacted] would fall on her mother or her father. She notes that it would be very difficult for her parents to assume responsibility for her son who is learning how to live with asthma. She also contends that, given her father's diabetes, it was be very difficult for him to take care of [redacted]

The AAO acknowledges the claims made by the applicant's father on the impact of his separation from the applicant, but finds the claims to be insufficiently supported by the record. While it establishes that the applicant's father has diabetes, the record fails to indicate the medications he is being given or the cost of these medications. It also fails to document that the applicant has been providing financial assistance to her father or the extent of that assistance. The AAO notes that the applicant's father indicates in his October 22, 2007, statement that his two sons, one a United States citizen and the other a LPR, reside in the United States. The record does not contain any evidence to demonstrate that the applicant's brothers would be unable or unwilling to financially assist their father in her absence. While the applicant's father claims that it will be difficult for him to help care for his grandson, the record contains no evidence to document the difficulties he would encounter caring for his grandson.

The AAO also notes the claim made by the applicant's father that the trauma that would result for his grandson if the applicant were to be removed from the United States would place an additional burden on his grandparents. While we note the handwritten statement from [redacted] that indicates [redacted] has asthma and uses a nebulizer, this statement does not demonstrate that [redacted] health will result in hardship to the applicant's parents. Neither does the record provide any documentary evidence that establishes how the applicant's departure would affect him mentally and emotionally.

The record also fails to support the claims of hardship made by the applicant's mother. The record does not contain medical records, detailed testimony, or other evidence that demonstrates the emotional impact of the applicant's removal on her mother. The record also contains no documentation to establish that the applicant's mother has arthritis, or how her condition has affected her ability to meet her daily responsibilities, including her employment as a home care attendant. The AAO again notes that, like the applicant's father, her mother has two sons, one a United States citizen and the other a LPR, who reside in the United States and the record does not indicate that her sons would be unable or unwilling to provide assistance to her in the absence of the applicant.

Based on a review of the record, the AAO finds that the hardship factors addressed in the record, even when considered in the aggregate, fail to demonstrate that the applicant's father and/or mother would experience extreme hardship if the applicant's waiver application is denied and they continue to reside in the United States without her.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found her statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.