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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, D.C. 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: SEP 21 2012 OFFICE: PANAMA CITY, PANAMA 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 with the field office or service center that originally decided your case by filing a 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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) 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 sought to procure admission to the United States through misrepresentation. The applicant is the son of U.S. citizens and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his parents as well as his spouse, children, and siblings.

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 Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated January 6, 2011.[1]

On appeal, counsel asserts that the denial of the applicant's wavier application by the U.S. Citizenship and Immigration Services (USCIS) is defective as a matter of fact and law as USCIS: failed to give sufficient weight to the documentary evidence; failed to read the hardship letters submitted by the applicant's parents and the psychological report submitted by [redacted]; erroneously referred to hardship upon relocation to Mexico and not Guyana; and erroneously indicated that the applicant's qualifying relative is his spouse and not his parents. *See Form I-290B, Notice of Appeal*, dated February 1, 2011.

The record includes, but is not limited to: a statement from counsel; letters of support from the applicant's parents; and identity and psychological documents. 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) In general.-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.

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[1] The AAO notes that, in her decision letter, the Field Office Director erroneously concludes that the applicant failed to establish extreme hardship to his demonstrated qualifying relative; his spouse, even though the Field Office Director initially identified the applicant's qualifying relative as his naturalized U.S. citizen father. Also, the AAO notes that the Field Office Director failed to identify and analyze extreme hardship to another demonstrated qualifying relative; the applicant's naturalized U.S. citizen mother.

...

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

The Field Office Director found the applicant inadmissible for having attempted to procure admission to the United States under the Visa Waiver program on December 21, 1999, by presenting a photo-substituted United Kingdom of Great Britain and Northern Ireland passport that did not belong to him. The record supports the finding, and the AAO concurs that the misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

(1) The Attorney General [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only demonstrated qualifying relatives in this case. 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,* 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 of Immigration Appeals (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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 applicant's father contends that he has suffered extreme mental, physical, and emotional hardship in the applicant's absence as: he has been suffering from a loss of appetite; he has not been getting enough sleep, which has been affecting his work; he is nervous, irritable, and depressed; the applicant's mother suffers from progressive, debilitating diabetes, which will destroy her nervous system and make her irritable; and the applicant's mother also suffers from other physical conditions, which require his assistance for her care, and for which they have been unable to rely on the applicant's siblings. The applicant's mother contends that her health conditions have been

worsening as: she is in a depressed state because she thinks about the applicant and his children; she breaks-out in blisters when she is depressed and nervous; and the applicant must spend money for legal and visa fees and each time his immigration-related medical evaluations expire.

Although the applicant's parents may experience some emotional and physical hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish that [redacted] conducted clinical interviews of the applicant's parents and in her psychological report, she indicates that the applicant's father's physical health is compromised by vegetative signs of Major Depressive Disorder and that the applicant's mother suffers from Mood Disorder with Major Depressive-Like Episode as well as exhibits symptoms of Intermittent Explosive Disorder. However, the record does not include any discussion concerning the evaluative methods used by [redacted] for making such diagnoses or any discussion concerning a specific course of treatment for the parents' mental health conditions. Rather, [redacted] report only contains the general statement: "[The applicant's] presence in the United States has the strong potential of sustaining their functioning, minimizing disease progression, and maximizing their ability to continue as contributing members, rather than dependents on society." *Psychological Evaluation*, dated October 5, 2009. Moreover, the record does not contain specific evidence of the applicant's parents' medical conditions and treatment other than what has been self-reported to [redacted] Absent an explanation in plain language from the treating mental health professional and physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of mental health or medical conditions or the treatment needed.

Further, the record does not include specific evidence of the applicant's parents' employment or the effect that their current mental health and physical conditions are having on their ability to perform their jobs. 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)). Without specific evidence in the record, the AAO cannot conclude that the applicant has established that his parents' hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's parents' emotional and physical hardship that they have experienced in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

The applicant's mother indicates that she would suffer extreme hardship if she were to relocate to Guyana to be with the applicant as: she is in danger because the crime situation in Guyana is public knowledge; criminal elements have targeted and attacked the applicant several times in the past, but he did not make any official report of the incidents to the authorities because he feared retribution; and, in 2007, criminals stole his car, which was his source of income. She also indicates that the

police were officially involved in the incident with the stolen car, and that she does not have any other family ties in Guyana except the applicant.

Although the applicant's parents may experience some hardship if they were to relocate to Guyana to be with the applicant, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. As nationals of Guyana, the applicant's parents should have reduced difficulties in transitioning to its society and culture. Also, the record does not include any evidence to the extent that the applicant's father, a national of Guyana, continues to maintain familial and social ties there, and the record does not include any evidence of the threats or harm that the applicant has experienced in Guyana. Additionally, the record does not include any evidence of social, political, or economic conditions in Guyana and how they would impact the applicant's parents. Without specific evidence in the record, the AAO cannot conclude that the record establishes that the applicant's parents' hardship would go beyond the normal consequences of inadmissibility.

Although the applicant's parents may experience some hardship as a result of relocation to Guyana, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's parents would suffer extreme hardship as a result of residing with the applicant there.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen parents as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 appeal will be dismissed.

ORDER: The appeal is dismissed.