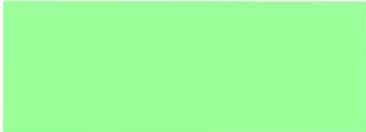


(b)(6)



U.S. Citizenship
and Immigration
Services



Date: MAY 30 2014

Office: NEWARK, NJ

FILE: 

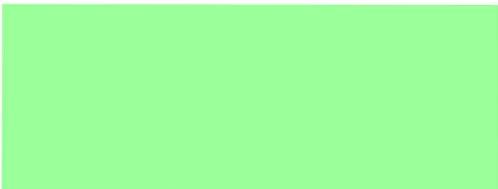
IN RE:

Applicant: 

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:



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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Peru who admitted to purchasing a false visa to enter the United States. The applicant 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). She is the daughter of a lawful permanent resident and has two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. lawful permanent resident mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 4, 2013.

On appeal, the applicant has submitted additional evidence explaining the extreme hardship her mother will experience if she is not admitted.

The record contains, but is not limited to, the following documentary submissions: a statement from the applicant's mother; a statement from [REDACTED] pertaining to the medical conditions of the applicant's mother; other medical records pertaining to the treatment of the applicant's mother; school and other vital records pertaining to the applicant's two children; copies of social security statements and bank statements for the applicant's mother; and copies of paystubs for the applicant.

Section 212(a)(6)(C) of the Act states, 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 chapter is inadmissible.

The record establishes that the applicant paid someone to obtain a fraudulent visa in her passport in order to enter the United States. As such, the applicant willfully misrepresented a material fact, her authorization to enter the United States, and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative 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-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*, 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, the applicant requests that additional evidence concerning the hardship to her mother be considered. A statement by the applicant's mother explains that she is a Lawful Permanent Resident (LPR) and is no longer employed. The applicant's mother states that her only source of income is social security, and that she depends on the applicant to take care of the rent and other utilities where they reside. She explains that she provides assistance to her daughter in the form of childcare, but that her health conditions sometimes keep her from being able to help. The applicant's mother further explains that the applicant has been sending money to her son in Peru, who is disabled with schizophrenia and cannot work, because she can no longer afford to send any money. She attests to the fact that she is physically dependent on the applicant to run her back and forth to doctor's appointments as well.

A statement from [REDACTED] M.D., dated October 18, 2013, states that the applicant's mother is a patient of her practice, and that the applicant's mother is being treated for Hyperlipidemia, Hypertension, Hypothyroidism, Vitamin D Deficiency and an abdominal/Pelvic Mass. The record also contains a number of prescription receipts issued to the applicant's mother, demonstrating her need for prescription medications to treat her conditions.

The record also contains copies of utility invoices and other monthly financial obligations of the applicant's mother, as well as paystubs for revenue earned by the applicant. Based on this evidence the record establishes that the applicant's mother would experience physical, financial and emotional hardship due to separation. When considered in the aggregate, the hardships to the applicant's mother that would result from the applicant's removal rise above the common hardships to a degree of extreme hardship.

With regard to hardship upon relocation, much of the evidence discussed above is relevant in this regard as well. The record contains significant evidence that the applicant's mother receives medical

treatment for a number of medical conditions. Disrupting her continuity of medical care in order to relocate with the applicant would result in a substantial physical hardship to her. The applicant's mother provided a statement in which she indicates that she would not be able to work at her age if she returned to Peru, and that she would not be able to afford the medications necessary to treat her medical conditions or receive adequate medical care.

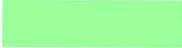
As noted above, the record contains evidence establishing the medical needs of the applicant's mother, and the ensuing physical and financial burdens it creates. The record also indicates that the applicant's mother is an LPR, which means that she would lose her LPR status if she had to relocate to Peru with the applicant. When these hardship factors are considered cumulatively with the common physical and financial burdens of relocation, the record establishes that the applicant's mother would experience hardships rising to the level of extreme hardship upon relocation.

The record further establishes that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The unfavorable factors in this case include the applicant's misrepresentation and unauthorized presence and employment. The favorable factors in this case include the presence of the applicant's mother and U.S. citizen children, the hardship the applicant's mother would experience upon relocation, the hardship the applicant's children would likely experience and the lack of any criminal record during her residence in the United States.



Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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.