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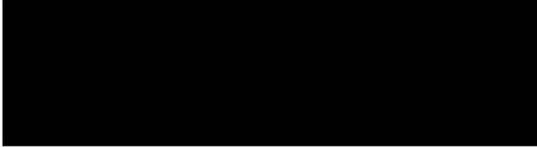
U.S. Department of Homeland Security
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2008

IN RE:

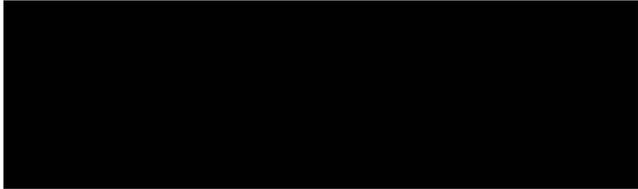
Applicant:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. **The appeal will be dismissed. The application will be denied.**

The applicant, [REDACTED] is a native and citizen of Guyana who the director 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Director, dated April 27, 2006.* The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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 conveys that [REDACTED] withdrew her application for admission into the United States after an Immigration and Naturalization Service (legacy INS) officer determined that she was attempting to use a fraudulent passport and visa in an attempt to gain admission into the country. The director was therefore correct in finding [REDACTED] inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to [REDACTED] and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are [REDACTED] naturalized citizen mother and her lawful permanent resident father. Once extreme hardship is established, it is but one favorable factor to be considered in

determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s qualifying relative must be established in the event that the qualifying relative joins the applicant to live in Guyana, and alternatively, he or she remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel claims that [REDACTED]’s parents would experience extreme hardship if [REDACTED] were removed from the United States. She states that before [REDACTED] mother and father moved to New York a couple of years ago to reside with [REDACTED] sister, [REDACTED] had taken care of her mother and that she continues to financially support her parents. Neither the applicant nor her parents have ties to Guyana, according to counsel. Counsel states that the law permits a showing of hardship to the noncitizen himself as well as to designated family members.¹ [REDACTED] counsel claims, has rheumatoid arthritis for which she receives regular treatment, and counsel states that [REDACTED]’s children, who are accustomed to life in the United States, have a close relationship with family members here, including their grandparents. Counsel states that [REDACTED] and her husband would experience economic hardship if the waiver application were denied because they own a house and assets here. Counsel states that the applicant’s brothers have an estranged relationship with her parents and [REDACTED] three sisters are experiencing financial hardship as a result of providing care for her parents. Counsel indicates that [REDACTED] continues to provide financial

¹ Hardship to the applicant and to the applicant’s child are not a consideration under section 212(i) of the Act, and will be considered here only to the extent that it impacts a qualifying relative.

support to her parents and that [REDACTED]'s father remains in the Kings Harbor Multicare Center in New York. Counsel states that, to [REDACTED] U.S. citizen son, the United States is home and uprooting him would constitute extreme hardship. She states that [REDACTED] daughter, as a young girl, was brought to the United States and since then considers the United States her home.

The income tax records and earnings statements reflect employment of the applicant's husband.

The letter by [REDACTED] the applicant's mother conveyed the following. She is 73 years old, has diabetes, and is on disability. She has difficulty ambulating and uses a cane, and relied on the applicant for many years to provide care. When she moved to New York to be with her husband, who had three strokes and is hospitalized, she moved in to live with another daughter. She and her husband will never see their daughter if she leaves the country. Both she and her daughter in New York will have to care for the applicant's son, [REDACTED] if the applicant leaves the country, because he will not have opportunities in Guyana.

In her letters, the applicant indicated that her ties to the United States are ownership of a house and vehicles, medical and life insurance, a retirement savings plan and a mutual fund, and a savings and checking account. She stated that she has two children and that she loves the United States, where she has lived for 14 years. She indicated that she provided care for her father and mother for many years and that if she leaves the United States it will be very hard on her parents. She stated that they will not be able to travel to Guyana to visit her and that her sister would need to care for their mother and [REDACTED] who would remain the United States.

The letter by [REDACTED] stated that his father has two jobs because his mother has rheumatoid arthritis, and if his mother returned to Guyana, she would not have medication for her condition. He stated that his mother recently had a left knee replacement and that he is concerned about who will care for him if his parents leave.

The letter by the applicant's daughter, [REDACTED] conveyed that she has lived in the United States for 14 years and is supported by her parents.

The letter dated March 31, 2006, by Kings Harbor Multicare Center stated that the applicant's father was admitted there on December 30, 2005, remains there as a resident, and is diagnosed with Diabetic Ketacidosis Deconditioned, diabetes, CHF hypertension, and S/P cerebrovascular accident.

The Supplemental Security Income statement shows the applicant's mother as receiving \$425.

In rendering this decision, the AAO has carefully considered the submitted evidence in the record.

In light of the serious medical condition of the applicant's father, the applicant established that her father would experience extreme hardship if he were to join her to live in Guyana.

The record, however, fails to establish extreme hardship to the applicant's parents if they were to remain in the country without her.

Although the applicant claims to provide financial support to her parents, the record does not reflect that she is employed and no evidence has been submitted of the financial support provided to her parents. 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)).

With regard to family separation, courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

██████████ indicates that the applicant has for many years provided care for her and her husband. The record shows the applicant’s father as residing at a residential care facility and her mother as living with a daughter in New York. In *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981), the court held that separation of parents from alien son is not extreme hardship where other sons are available to provide assistance. Because the applicant’s father is receiving care at a residential care facility and her mother is being cared for by her sister, the applicant’s parents will not experience extreme hardship if they were to remain in the country without her.

The record conveys that the applicant’s parents have a close relationship with her and are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s father and mother, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s mother and father, is unusual or beyond that which is normally to be expected upon removal.

Although the applicant states that her son will remain in the United States with her sister and mother if she were to return to Guyana, the AAO finds that the record fails to establish how the applicant’s mother would experience extreme hardship if this occurred.

In considering the hardship factors raised, both individually and cumulatively, the record fails to demonstrate extreme hardship to the applicant’s father or mother if they were to remain in the United States without her.

In the final analysis, the applicant established extreme hardship to her father if he were to join her in Guyana. But the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship if the applicant’s father or mother were to remain in the United States without her. The record therefore does not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i). Accordingly, the appeal will be dismissed. The petition will be denied.

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application is denied.