

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship  
and Immigration  
Services

H2

FILE:

Office: ALBANY, NY

Date:

AUG 25 2009

IN RE:

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.

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana who was 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 having procured admission into the United States by fraud or willful misrepresentation in August 1999. The applicant is married to a U.S. citizen and has a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision dated May 17, 2006, the district director concluded that the evidence in the record did not show that the applicant's U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility. The application was denied accordingly.

Counsel then submitted a Motion to Reopen and Reconsider, dated June 16, 2006, which was denied by the district director on March 9, 2007.

In a Notice of Appeal to the AAO (Form I-290B), dated March 30, 2007, counsel states that the evidence in the record establishes that the applicant's spouse will suffer extreme hardship if the applicant is denied admission and that the record establishes the remorse and rehabilitation of the applicant.

The AAO notes that the record includes: counsel's brief, two letters from the applicant's spouse's doctor, a statement from the applicant, a statement from the applicant's spouse, photographs of the applicant and his family, school records for the applicant's daughter, and hospital records for the applicant's spouse.

The record indicates that in August 1999 the applicant presented a fraudulent passport at John F. Kennedy International Airport in New York, New York in order to gain admission to the United States.

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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or his daughter experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Guyana and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record indicates that the hardships that will be suffered by the applicant's spouse if the applicant is removed from the United States primarily concern the applicant's spouse's Type II diabetes. The record includes two letters from the applicant's spouse's endocrinologist, [REDACTED]. In the most current letter, dated April 20, 2007, [REDACTED] states that she has been treating the applicant's spouse for insulin-dependent diabetes mellitus for over one year and that during this time it has become clear that it is very difficult for the applicant's spouse to control her diabetes. She states that

the applicant's spouse's blood sugars continue to fluctuate between significantly high and dangerously low. \_\_\_\_\_ states that these fluctuations continue despite a sophisticated insulin regime, using newer long-acting and rapid-acting insulin to improve her diabetes care. \_\_\_\_\_ states that the applicant's spouse described to her a recent incident of hypoglycemia, which occurred at work and required an emergency room visit. \_\_\_\_\_ states that poorly controlled diabetes has severe long-term health implications and that hypoglycemia is dangerous and potentially life threatening. \_\_\_\_\_ asserts that she is concerned that the applicant's spouse will do poorly in a less sophisticated health care environment or in one in which she would not have access to state of the art insulin or insulin pumps. \_\_\_\_\_ states that it is her understanding that the applicant's spouse would be unable to obtain adequate care for her diabetes in Guyana and that returning to Guyana would be a profound threat to her health and would likely shorten her lifespan.

In an affidavit dated April 27, 2007, the applicant's spouse states that her father suffered from diabetes for a long time and that his condition was so bad that he was required to have an operation to have his leg amputated. She states that after this operation, her father died of a heart attack on March 18, 2005. The applicant's spouse states that it has been five years since she was diagnosed with diabetes and that she still is not able to control her blood sugar. She states that she worries about suffering the same fate as her father and, if the applicant is removed to Guyana, leaving her daughter with no one to care for her. She states that when her blood sugar is high she cannot see well and when it is low her heart pounds and she feels like she is having a heart attack. In her affidavit the applicant's spouse described two incidents where she was not able to control her diabetes and fainted. She states that during one incident the applicant was there to help her. The applicant's spouse states that the applicant is very kind and helpful to her and her daughter. She states that she works the night shift at her job and that the applicant helps to get her daughter ready to go to school.

The AAO notes that the record contains a copy of the death certificate for the applicant's spouse's father and emergency room reports from when the applicant's spouse was admitted to the hospital on April 10, 2007, July 15, 2005, May 25, 2004, and February 6, 2004. The AAO notes that the emergency room report from February 6, 2004 explicitly states that the applicant's spouse was neurologically unresponsive at 5:30 a.m., as noted by her husband.

In a separate affidavit, dated June 16, 2006, the applicant's spouse states that she has twenty-two members of her immediate family who now live in the United States as either U.S. citizens or lawful permanent residents and she has no family in Guyana. She states that she and the applicant have one daughter and that they juggle their work schedules so that someone is always home to watch and care for her. She also states that she suffers from Type II diabetes and has been taken to the emergency room twice during the past two years after falling into a diabetic coma. She states that she suffers from wild swings in her blood pressure at night and that without the applicant with her she is at risk of falling into another coma with no one to call the ambulance, as the applicant previously did. Finally, she states that because of her diabetes and worries about the applicant's status, she has become increasingly depressed and nervous over what will happen to her and her daughter if the applicant's waiver application is denied.

The AAO finds that due to the severe nature of the applicant's spouse's condition, the fact that the applicant and his spouse have a seven-year-old daughter and that they share in the responsibilities of caring for their daughter, the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. As established by the record, the applicant's spouse's condition is so severe that she requires emergency medical care (many times at night) and during these critical times relies on the help of those in her immediate surroundings to access this care. The record shows that she was diagnosed with diabetes five years ago and that her condition has become worse with time. The record also shows that the applicant's spouse's father had the same condition, requiring surgery to amputate his leg, from which he died. The AAO notes that although the applicant's spouse has many family members living in the United States, her condition requires the care of someone living in the same household and none of these familial relationships can replicate the closeness that a spousal relationship provides and the applicant requires to care for a severe, unpredictable, and life-threatening condition like uncontrolled Type II diabetes. Thus, separating the applicant's spouse from the applicant would cause extreme hardship in the applicant's spouse's life.

In addition, the AAO finds that relocating to another country, in particular a developing country such as Guyana where she would not have access to the same level of health care as she does in the United States, would put the applicant's spouse's health at risk. The AAO notes that in his brief, counsel cites to various reports on country conditions in Guyana stating that Guyana is one of the poorest countries in the Western Hemisphere, with a population suffering from inadequate health care and poor educational facilities. Therefore, relocating to Guyana to be with the applicant would also cause the applicant's spouse extreme hardship.

Finally, the AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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 adverse factor in the present case is the applicant’s fraudulent entry into the United States in 1999. The favorable factors in the present case are the applicant’s extensive family ties to the United States; extreme hardship to his U.S. citizen spouse if he were to be denied a waiver of inadmissibility; the applicant’s record of financial support to his family and the applicant’s lack of any criminal record.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.