

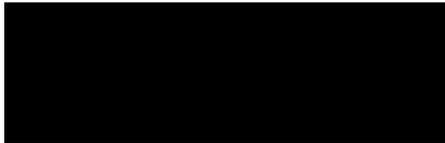
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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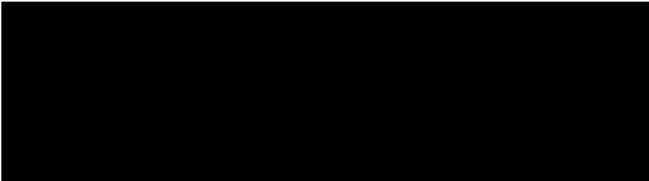
FILE: [REDACTED] Office: NEW YORK, NY

Date: JUL 28 2010

IN RE: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (i)

ON BEHALF OF APPLICANT:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the applicant's waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The applicant has now filed a motion to reopen/reconsider. The motion will be granted. The AAO will withdraw its prior decision and the waiver application will be approved.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having attempted to enter the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a lawful permanent resident mother. He seeks waivers of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to remain in the United States.

In her decision, the District Director concluded that the record did not establish that the bars to the applicant's admission would result in extreme hardship to a qualifying relative and, further, that a favorable exercise of discretion was not warranted in the applicant's case. She denied the application accordingly. *Decision of the District Director*, dated April 2, 2009. On appeal, the AAO also found the record to lack sufficient evidence to demonstrate extreme hardship to a qualifying relative. *Decision of the Acting Chief*, dated August 6, 2009.

On motion, counsel contends that the AAO underestimated and dismissed the hardship that the applicant's qualifying relatives would face if he is not permitted to remain in the United States. *Form I-290B, Notice of Appeal or Motion*, filed September 8, 2009; *Counsel's brief*, dated September 4, 2009.

The record includes the following new or additional evidence: an overview of conditions in Guyana by Professor [REDACTED] a second statement from licensed clinical social worker Dr. [REDACTED] a copy of the previously submitted section on Guyana from the Department of State's 2008 Country Reports on Human Rights Practices; a second letter from nutritionist [REDACTED] an article on eating disorders from the *International Journal of Eating Disorders*; a second letter from Dr. [REDACTED]; a letter from [REDACTED] a new statement from the applicant's mother; and new medical documentation relating to the applicant's mother. All evidence in the record, including that previously submitted in support of the applicant's waiver application, was reviewed in reaching a decision in this matter.

In that the applicant's inadmissibility under sections 212(a)(2)(A)(i)(I) and (6)(C)(i) of the Act is not in question, the AAO will not address the bars to the applicant's adjustment of status. Further, as the AAO previously determined that the applicant's mother would experience extreme hardship if she remained in the United States, it will not further consider this aspect of the applicant's extreme hardship claim.

As discussed in the AAO's dismissal of the applicant's appeal, his eligibility for a waiver is dependent first upon a showing that the bars to his inadmissibility would impose an extreme hardship on his U.S. citizen spouse and/or his lawful permanent resident mother. Hardships the

applicant or other family members would experience as a result of his inadmissibility are not considered in section 212(h) and section (i) waiver proceedings, except to the extent that they would affect the applicant's qualifying relatives. Should extreme hardship be 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 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 alien 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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).

In determining extreme hardship, the AAO considers hardship to a qualifying relative in both the country of relocation and the United States, as a qualifying relative is not required to reside outside the United States based on the denial of an applicant's waiver request.

The AAO turns first to a consideration of the additional evidence submitted to establish that the applicant's spouse would suffer extreme hardship if his waiver application is denied.

Counsel submits an August 23, 2009 statement prepared by Dr. [REDACTED] the licensed clinical social worker who previously conducted a psychological evaluation of the applicant's spouse. Although the AAO notes the assertions made by Dr. [REDACTED] in this statement, it observes that they are again based on his 2007 interview of the applicant's spouse, which the AAO previously found to be insufficient to establish the applicant's spouse's emotional/mental state. The AAO also notes that a number of the opinions expressed by Dr. [REDACTED] concerning country conditions in Guyana and the basis for the applicant's departure from Guyana, which factor into his evaluation, are not established by the record. 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)). Accordingly, the AAO finds Dr. Silver's response to be of limited value in determining extreme hardship in the present matter.

The AAO has, however, taken note of the September 1, 2009 letter written by nutritionist Sondra Kronberg who indicates that, for the past year, she has been treating the applicant's spouse for an eating disorder. Although the record does not demonstrate that Ms. [REDACTED] is a licensed mental health practitioner, the AAO notes that it does establish her expertise and experience in the treatment of individuals who suffer from eating disorders. In her letter, Ms. [REDACTED] states that individuals with eating disorders are physiologically, emotionally and behaviorally vulnerable to relapse or exacerbation, particularly when faced with unexpected change, loss or betrayal. The longer an eating disorder stays in place, Ms. [REDACTED] indicates, the more debilitating it becomes. She contends that it is imperative that treatment and a consistent supportive environment be quickly established in order to minimize the extent of loss of cognitive judgment and emotional stability that result from eating disorders. To establish eating disorders as serious mental illnesses, the record contains the article, "Academy for Eating Disorders Position Paper: Eating Disorders Are Serious Mental Illnesses," *International Journal of Eating Disorders* 42:2, 97-103, 2009; and the discussion on binge eating from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*.

In the present case, Ms. [REDACTED] states that the applicant's spouse has been struggling with her eating disorder since adolescence and that her concerns regarding separation from the applicant or relocation to Guyana have triggered several former eating disorder behaviors. Ms. [REDACTED] reports that the applicant's spouse is once again bingeing on food and is morbidly obese, and that it has become difficult for her to work and function. She also indicates that the resulting weight gained by the applicant's spouse is contributing to a variety of medical complications with her heart, lungs and circulatory system, and that her treatment has also been compromised because she is so consumed by the applicant's situation. Ms. [REDACTED] further notes that the applicant's spouse's parents, who continue to play a major role in her daily care, have been unable to prevent her relapse.¹ Ms. [REDACTED] asserts that, if the applicant's spouse is to get well, she must have a nurturing environment that includes both her parents and the applicant. She also indicates that leaving the country would significantly increase the risks to the applicant's spouse's health as it would undoubtedly trigger depression, anxiety and eating disorder behaviors.

A September 2, 2009 letter from Dr. [REDACTED], the physician who has cared for the applicant's spouse since 2000, states that it is only within the previous year that the applicant's spouse has, at the urging of her family and the applicant, agreed to seek help for her eating habits. Dr. [REDACTED] further states that the fact that the applicant's spouse has remained in therapy is a credit to her parents, the applicant and her therapist, [REDACTED]. However, he also notes that since the applicant was detained, his spouse has returned to some of her past eating habits and that her parents have not been able to help her. Dr. [REDACTED] also voices concern that the applicant's spouse's

¹ The AAO notes that, at the time of Ms. [REDACTED] letter, the applicant had been detained by the Department of Homeland Security since February 2009.

relocation would result in further deterioration of her conditions. He notes that differences in culture, language, diet and social attitudes toward eating disorders, as well as the loss of the applicant's spouse's existing social support structure, would contribute to a decline in her functioning.

In its dismissal of the applicant's appeal, the AAO found the record to lack sufficient evidence to demonstrate that relocation would result in significant hardship to the applicant's spouse based on her mental and/or physical health. It now finds this deficiency to have been corrected on motion. The statements provided by Ms. [REDACTED] and Dr. [REDACTED], both of whom are familiar with the applicant's spouse's eating disorder and her history, and the submitted material on eating disorders establish the long-term and difficult nature of the applicant's spouse's mental health problem and the negative impacts of a changed environment on her health. While the record does not document that there are no medical facilities or personnel in Guyana to treat the applicant's spouse, the AAO acknowledges that the applicant's spouse's separation from her immediate family and her entry into a new and unfamiliar culture would be likely to exacerbate the mental and physical problems she already faces. When the effects of relocation on the applicant's spouse's health are added to the normal disruptions and difficulties associated with any relocation, the AAO finds the applicant to have established that moving to Guyana would result in extreme hardship for his spouse.

The AAO also finds the additional evidence in the record to establish that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant. Both Ms. [REDACTED] and Dr. [REDACTED] report the significant negative impacts that the applicant's potential removal and his detention have had on his spouse's health, including her return to binge eating. Both note that the applicant's spouse's parents, by themselves, have been unable to prevent their daughter's emotional and physical relapse, and that the applicant's presence has been instrumental in getting his spouse to seek and continue treatment for her eating disorder. When considered in the aggregate, the impact of the applicant's removal on his spouse's health and the hardships normally created when spouses are separated are sufficient to demonstrate that the applicant's spouse would suffer extreme hardship if she remains in the United States without him. Accordingly, the AAO finds the applicant to have established that a qualifying relative would experience extreme hardship as a result of his inadmissibility, as required for a waiver under sections 211(h) and (i) of the Act.²

The AAO additionally 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

² As the record establishes that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility, the AAO does not find it necessary to consider whether the evidence submitted on appeal also establishes extreme hardship to the applicant's lawful permanent resident mother if she relocates to Guyana.

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, "[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 factors in the present case are the applicant's use of a fraudulent passport and visa in a 1999 attempt to enter the United States, the act for which he now seeks 212(h) and (i) waivers; his failure to appear for arraignment on the charges relating to his use of this fraudulent documentation; his failure to reveal his true identity even while admitting to his possession of a false passport; and his unauthorized employment while in the United States. The favorable factors in the present case are the applicant's family ties to the United States, which include his U.S. citizen spouse, his lawful permanent resident mother, and his U.S. citizen sisters and brother; the extreme hardship to his U.S. citizen spouse if he were to be denied a waiver of inadmissibility; his mother's health conditions; his payment of taxes; the absence of a criminal record or offense beyond his conviction for attempting to enter the United States unlawfully; and the letters of support from family and friends.

The AAO finds that the violations committed by the applicant were 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 AAO will withdraw its prior decision and the application will be approved.

ORDER: The AAO withdraws its prior decision and the application is approved.