



U.S. Citizenship
and Immigration
Services



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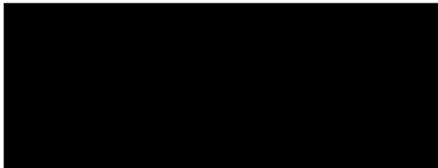
DATE: NOV 20 2012 Office: PANAMA CITY, PANAMA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i), 1182(a)(9)(A),

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.

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Act for entering the United States through misrepresentation. The applicant's spouse is a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *See Decision of the Field Office Director, dated June 9, 2011.*

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal, dated July 8, 2009.*

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statements, medical records, financial records, and various immigration forms. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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 reflects that the applicant arrived at the Miami International Airport in the United States on January 13, 2003 with a passport belonging to another individual and applied for admission. The applicant admitted under oath that she promised to pay a sum of money for use of the passport and visa to enter the United States. The applicant expressed a fear of return to Guyana after being placed into Expedited Removal proceedings and was given a Credible Fear interview. The applicant was removed to Guyana in October of 2004 after all hearings and appeals were denied. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO concurs in this decision. The applicant does not contest these findings.

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

(1) The [Secretary] may, in the discretion of the [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 [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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-I-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 1292 (9th Cir. 1998) (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.

Counsel states that the applicant’s spouse has been diagnosed with Major Depressive Disorder, a condition that causes him difficulty in conducting daily routine functions. Counsel also indicates that the applicant’s spouse is currently taking prescription medication for this condition.

The applicant’s spouse states that he and the applicant have been in a committed relationship for an extended period of time and they have one United States citizen child who is now living in [REDACTED] with the applicant, he therefore is unable to see his child on a regular basis. The applicant’s spouse also indicated that he has traveled to see the applicant and their child on several occasions but it is very expensive to do so. The applicant’s spouse further indicates that he must send money to his family in [REDACTED] a regular basis which further adds to the stress he is under while they are living apart. The applicant’s spouse submitted letters from his doctors indicating he has been diagnosed with Major Depressive Disorder due to the separation from his family, and is currently taking medication for his condition. *See letter from [REDACTED] dated June 24, 2011, see also letter signed by [REDACTED] MD., dated June 20, 2011.* The applicant’s spouse indicates that he cannot live with the applicant and their child in [REDACTED] because he must care for his father who has been diagnosed with Chronic Obstructive Pulmonary Disease (COPD) and he would be very worried that his father’s condition would worsen if he left him in the United States. The applicant’s spouse states that his father lives with him so that he can take him to all appointments and ensure he is cared for properly. The applicant’s spouse finally indicates that if he were to return to [REDACTED] he would fear for his safety because it is a dangerous country and also that he would be unable to find comparable employment in order to care for his family.

Although there is no doubt that the circumstances surrounding the applicant’s inadmissibility has caused her spouse to suffer some negative physical and emotional consequences, the evidence provided does not sufficiently demonstrate that these difficulties rise to a level of extreme hardship.

The documentary evidence supplied does not indicate that the applicant's spouse is in fact undergoing more than would be expected under such circumstances as these. While the applicant's spouse has indicated he is undergoing additional stress due to the extra financial burdens created by the applicant's continued inadmissibility to the United States; there has been no showing that events such as his trips to [REDACTED] or sending funds to the applicant have caused the applicant's spouse to suffer any specific financial hindrance in his life. Moreover, although medical letters were offered into evidence indicating the applicant's spouse is suffering from Major Depressive Disorder due to his continued separation from the applicant, the record lacks an indication of any specific treatment plan for this condition, and the AAO is unable to conclude that the applicant's spouse's emotional difficulty can be distinguished from the common consequences of separation from a spouse.

In addition, while it is understandable that the applicant's spouse does not wish to leave his father without assistance, there has been no evidence offered as to why his other siblings, who also reside in the United States, could not create an alternate network of care under these circumstances. Finally, the applicant's spouse also expressed concern about an inability to find employment and other possible challenges living within [REDACTED]; however, the applicant provided no specific evidence as to why her spouse would face more than the normal difficulties of returning to a country after living outside for a number of years to demonstrate that he would suffer extreme hardship upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 her United States citizen spouse 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.