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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



U.S. Citizenship  
and Immigration  
Services



#5

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 30 2010**

IN RE: [REDACTED]

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 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO as a motion to reopen/reconsider. The motion will be granted. The AAO will withdraw its prior decision and the application shall be approved. The Director shall continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status.

The record reflects that the applicant is a native and citizen of Cuba who 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), for using a photo-substituted Ecuadorian passport to enter the United States. The record indicates that the applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated July 31, 2006. The AAO concluded that while the applicant had established that his spouse would experience extreme hardship if they were separated, he had failed to provide similar evidence of the hardship she would suffer if she relocated with him to Cuba. *Acting Chief's Decision*, April 14, 2009.

On motion, the applicant, through counsel, contends that his spouse would suffer extreme hardship if she relocated to Cuba and submits additional evidence in support of his claim. *Form I-290B, Notice of Appeal or Motion*, dated May 13, 2009.

In support of the motion, the record includes, but is not limited to, counsel's brief; additional statements from the applicant, his spouse and his spouse's family; two additional psychological evaluations of the applicant's spouse; a dental treatment plan for the applicant's spouse; an earnings statement for the applicant; certificates awarded to the applicant; documentation relating to an educational loan; a 2009 tax return; evidence relating to a car loan and car insurance; medical testing results for the applicant's mother-in-law; a statement from the physician treating the applicant's mother-in-law; and country conditions materials and media articles on Cuba. The entire record, including the evidence submitted on appeal and in support of the waiver application, was reviewed and considered in arriving at a decision in this matter.

As indicated in its prior decision, the AAO interprets the statutory language of the various waiver provisions in section 212 of the Act to require the applicant in this matter to establish extreme hardship to his spouse whether she remains in the United States or relocates to Cuba. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 BIA 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 BIA 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 BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm. 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 BIA 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. ██████ was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The AAO has previously determined that the applicant’s spouse would experience extreme hardship if he is excluded and she remains in the United States. Accordingly, the AAO’s consideration of the record in this matter will focus solely on whether the additional evidence submitted by the applicant on motion, when added to that previously considered by the AAO, establishes that the applicant’s spouse would also experience extreme hardship if she relocates to Cuba.

On motion, counsel states that the applicant’s spouse suffers from medical problems and is currently seeing a psychiatrist and a psychotherapist. She asserts that, although the applicant’s spouse’s mental health has improved as a result of medication and therapy, the possibility of relocating to Cuba has brought back symptoms of depression, tremendous anxiety and emotional upheaval, which are having a serious impact on her life. Counsel asserts that the applicant’s spouse will be unable to obtain help for her mental health problems in Cuba. Counsel also contends that relocation to Cuba would result in a tremendous change in the applicant’s spouse’s standard of living as the applicant would not be able to obtain the same type of employment at the same type of facility with the same rate of pay in Cuba. Counsel further states that, if she moved to Cuba, the applicant’s Cuban-born spouse might not be able to leave as the Government of Cuba would not recognize her U.S. citizenship. Counsel also notes that the Province of Pinar del Rio, in which the applicant once lived in Cuba and where his parents still live, was devastated by hurricanes in 2008 and has not recovered. She contends that a U.S. citizen should not be subjected to the conditions in Pinar del Rio or to conditions in Cuba generally.

In a May 6, 2009 statement, the applicant’s spouse states that she is closely tied to her family in the United States and that she has no attachment to Cuba. She states that her ties to her family have become even more important to her following her father’s recent death. She asks how she will be able to live in a country with no jobs, no money, no food and nowhere to live, noting that the

applicant's hometown has been destroyed. The applicant's spouse also asserts that, as the Government of Cuba does not accept dual nationality, she would lose her U.S. passport as soon as Cuban authorities learned she was planning to live permanently in Cuba. She also contends that she would not be able to obtain medical care if she relocated as U.S. citizens must pay cash for health care services in Cuba.

In a separate statement, the applicant asserts that, while his spouse speaks Spanish, her language skills are not good enough to compete in a job market or attend university in a Spanish-speaking country. He also asserts that the province where he once lived, [REDACTED] was destroyed by hurricanes in 2008 and that, despite Government of Cuba claims to the contrary, the province's hospitals are destroyed, the water is almost undrinkable, crops have been devastated, entire families have been displaced and there is no hope for change. He contends that he would not be able to provide food and shelter for his wife under such conditions. The applicant also states that his spouse will require medical care as a result of being separated from her family and that such care will not be available.

In support of counsel's claims regarding the applicant's spouse's mental health, the record contains two statements from [REDACTED] a licensed clinical social worker, who has been the applicant's spouse's psychotherapist since September 27, 2007. In a statement, dated May 6, 2009, Ms. [REDACTED] reports that the applicant's spouse is continuing her therapy on a once-a-month basis and is seeing a psychiatrist for medical management. She notes that the applicant's spouse is experiencing panic at the prospect of having to choose between remaining in the United States or relocating to Cuba, and that the possibility of living in Cuba has resulted in depression, tremendous anxiety and emotional upheaval, which are affecting her quality of life. A second May 10, 2010 statement from Ms. [REDACTED] indicates that the applicant's spouse is continuing with her therapy and medication, but that her emotional distress has been exacerbated by the fact that her mother has been diagnosed with a neck tumor for which she has undergone surgery. The AAO notes that the record documents that the applicant's spouse's mother underwent surgery on April 16, 2010 for a neck tumor and that the applicant's spouse has been prescribed medication for depression. The AAO also notes that the record contains a prior evaluation of the applicant's spouse prepared by Ms. [REDACTED] as well as a psychological evaluation of the applicant's spouse by psychologist Dr. [REDACTED] which the AAO previously accepted as proof of the emotional hardship the applicant's spouse would suffer if she were separated from the applicant. The record also contains numerous letters from family and friends, as well as the applicant's supervisor at his place of employment, that describe the emotional fragility of the applicant's spouse.

To establish conditions in Cuba, the applicant has submitted country conditions materials and online articles on life in Cuba. The AAO specifically notes that the applicant has provided excerpts from the Department of State's Country Specific Information report on Cuba, which states that medical facilities in Cuba may be short of medical supplies, that many medications are unavailable in Cuba and that, when in Cuba, U.S. citizens, even those who were born in Cuba, are required to pay for all healthcare services in cash and may only be treated in hospitals for foreigners. The report also establishes that the Government of Cuba does not recognize the U.S. citizenship of individuals born

in Cuba and denies consular access to such individuals by the U.S. Interests Section. It further indicates that dual nationals have sometimes been required to surrender their U.S. passports and that they may be required to obtain exit permission from the Cuban government in order to return to the United States. The report also advises U.S. citizens born in Cuba to be "especially wary" of any attempt by Cuban authorities to compel them to sign repatriation documents, which the GOC views as legal statements of intent to resettle permanently in Cuba. In several instances, the Department of State notes, the Cuban Government has seized the passports of these dual nationals and has denied them permission to return to the United States.

When the AAO considers the applicant's spouse's close family ties to the United States, her fragile emotional health, her continuing need for psychotherapy and medication, the impact that losing her current healthcare providers would have on her, the difficulties she would face in meeting her health care needs in Cuba and the legitimate concerns created by the Government of Cuba's unwillingness to recognize the U.S. citizenship of individuals born in Cuba, it finds the record to establish that the applicant's spouse would experience extreme hardship upon relocation to Cuba. Accordingly, the applicant has demonstrated extreme hardship to a qualifying relative under section 212(i) of the Act.

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 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*, 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 only adverse factor in the present case is the applicant's misrepresentation for which he now seeks a waiver. The favorable factors are the applicant's U.S. citizen spouse; the extreme hardship she would suffer if he were to be denied a waiver of inadmissibility; the applicant's lawful employment in the United States; his payment of taxes; the certificate of appreciation from his employer; his charitable contribution to the United Way; the absence of a criminal record; and, as documented by statements from family and friends, the applicant's unwavering care for and support of his spouse.

Although the misrepresentation committed by the applicant was serious in nature and cannot be condoned, 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 prior decision of the AAO will be withdrawn and the application will be approved. The Director shall continue to process the applicant's Form I-485.

**ORDER:** The prior decision of the AAO is withdrawn. The application is approved. The Director shall continue to process the applicant's Form I-485.