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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

HS

FILE:



Office: NEWARK, NJ

Date:

MAR 25 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru 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 having entered the United States through fraud or willful misrepresentation. The record indicates that the applicant is the daughter of a naturalized United States citizen and the mother of a United States citizen son. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen mother and son.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 29, 2007.

On appeal, the applicant, through counsel, asserts that "hardship to the [applicant's mother], the qualifying relative, has been manifested quite clearly." *Form I-290B*, filed June 21, 2007. Additionally, counsel correctly points out that the Field Office Director erred in stating the applicant's spouse is the qualifying relative in this matter as the applicant is not married. The AAO notes that the applicant's only qualifying relative is her naturalized United States citizen mother.¹

The record includes, but is not limited to, counsel's appeal brief, psychological evaluations of the applicant and her mother, and documents from the applicant's immigration proceedings. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

¹ The AAO also notes that the record contains a request from counsel to consolidate the applicant's appeals of the denials of the Form I-601 and Form I-485. The AAO does not, however, have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

In the present case, the record indicates that on January 7, 1992, the applicant’s lawful permanent resident mother filed a Form I-130 on behalf of the applicant. On February 26, 1992, the applicant’s Form I-130 was approved. On March 14, 1994, the applicant entered the United States by presenting a photo-substituted passport. On March 15, 1994, an Order to Show Cause (OSC) was issued against the applicant. On June 16, 1994, an immigration judge ordered the applicant removed *in absentia* from the United States. On December 11, 1995, a Warrant of Deportation (Form I-205) was issued. The applicant failed to depart the United States as ordered. In 2003, the applicant’s mother became a United States citizen. On February 24, 2003, the applicant filed a motion to reopen the immigration judge’s decision. On March 25, 2003, an immigration judge denied the applicant’s motion to reopen. On April 24, 2003, the applicant filed a motion to reconsider the immigration judge’s denial of her motion to reopen. On May 5, 2003, the applicant’s motion to reconsider was denied. On May 14, 2003, another Warrant of Deportation was issued. On June 10, 2003, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On May 17, 2004, the BIA remanded the applicant’s case to the immigration judge. On November 16, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and a Form I-601. On November 30, 2004, an immigration judge terminated immigration proceedings against the applicant. On May 29, 2007, the Field Office Director denied the applicant’s Form I-601, finding the applicant had entered the United States by misrepresentation and had failed to demonstrate extreme hardship to her qualifying relative. On August 7, 2007, the Field Office Director denied the applicant’s Form I-485.

In that the applicant attempted to enter the United States with a photo-substituted passport, the AAO finds that she willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon removal is not directly relevant to a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant’s son would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver, under section 212(i) of

the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's son is not considered in section 212(i) waiver proceedings except to the extent that it creates hardship for a qualifying relative. 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 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 *Cervantes-Gonzalez*, the BIA 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. The BIA has also 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).

U. S. courts have stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of*

Shaughnessy, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

On appeal, counsel states that the applicant’s mother is blind in one eye and legally blind in the other, and that her condition is deteriorating. He asserts that she “suffers from severe stomach and nerve problems.” The record also contains a psychological evaluation of the applicant’s mother prepared by [REDACTED] that reports the applicant’s mother suffers from numerous medical conditions, including severe arthritis in her hands and calves, high cholesterol, high blood pressure, constant nightmares and insomnia. Counsel further contends that the applicant’s mother does not have any family ties to Peru and that country conditions there preclude her from relocating. He states that the Department of State’s “Country Report of Peru” indicates that there are significant obstacles in Peru to persons with disabilities. Counsel states that “[a]s a person with a disability, it would be impossible for [the applicant’s mother] to maintain a standard of living in any way comparable to the one she now has in the United States.”

While the AAO notes the preceding assertions, it does not find the record to support them. The applicant has submitted no medical documentation that establishes her mother is suffering from any medical conditions and [REDACTED] does not indicate that her statements are based on a review of any medical records concerning the applicant’s mother. Further, even were the record to establish that the applicant’s mother has medical problems, it contains no documentary evidence that she would be unable to receive adequate medical care in Peru or that her care could only be provided in the United States. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

[REDACTED] also states that in Peru, the applicant “would have no home, ability to support herself and pay for childcare there.” While the AAO acknowledges that the applicant’s ability to earn a living is relevant to her elderly mother’s relocation to Peru, the record fails to contain documentary evidence of economic conditions in Peru and, in the absence of such evidence, [REDACTED] assertion is insufficient proof that the applicant would be unable to obtain sufficient employment to support her family. See *Matter of Soffici*, *supra*. Based on the record before it, the AAO does not find the applicant to have established that her mother, her only qualifying relative, would experience extreme hardship if she returned to Peru.

In addition, the record also fails to establish extreme hardship to the applicant’s mother if she remains in the United States. The AAO notes that as a United States citizen, the applicant’s mother is not required to reside outside the United States as a result of denial of the applicant’s waiver request. On appeal, counsel contends that the applicant is the only family member who is equipped to deal with her mother’s medical conditions, that other household members are employed and do not have the time necessary to attend to the applicant’s mother’s medication and treatment schedule, or her doctors’ visits. In her

psychological evaluation, [REDACTED] states that the applicant's mother "has become severely anxious, depressed, stressed, worried and agitated whenever she thinks about what could happen to [the applicant] if she is deported." Further, [REDACTED] states that the applicant's mother "may be sinking into a psychotic depression," but that the family cannot afford to get her psychiatric care. She further states that the applicant's mother "has become completely dependent upon her daughter, [the applicant] for daily support and help with most aspects of her life largely due to the former's numerous debilitating medical conditions." [REDACTED] further finds that the applicant is the family member who has the time and temperament to care for her mother as her other adult siblings are too preoccupied with their own lives and have no space for their mother to live with them. [REDACTED] diagnoses the applicant's mother with major depression and generalized anxiety disorder.

[REDACTED] also states that the applicant's "nieces and nephews depend on [the applicant] for everything." The AAO notes, however, that hardship to the applicant's nieces and nephews is not directly relevant to a determination of extreme hardship in section 212(i) proceedings and the record fails to document how any emotional hardship the applicant's nieces and nephews might experience as a result of the applicant's absence would affect their grandmother, the only qualifying relative.

Although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] assessment of the impact of the applicant's removal on her mother is based, in large part, on the applicant's role as her mother's primary caregiver and her mother's resulting dependence on her. The record, however, does not establish the applicant as her mother's primary caregiver. The applicant has submitted no medical documentation that demonstrates that her mother requires a caregiver or that she is that caregiver. Further, while at the time of the 2004 evaluation, the record established that the applicant and her mother were residing at the same address as the applicant's sister and brother-in-law, this is no longer the case. The record indicates that the applicant has moved to Florida, but fails to establish that her mother has accompanied her. In that the record does not establish the role that the applicant has played or now plays in her mother's life, the AAO finds the submitted psychological evaluation of diminished value to a determination of extreme hardship. Based on the record before it, the AAO does not find the applicant to have established that her mother would experience extreme hardship if her waiver application were to be denied and her mother remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. 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)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.